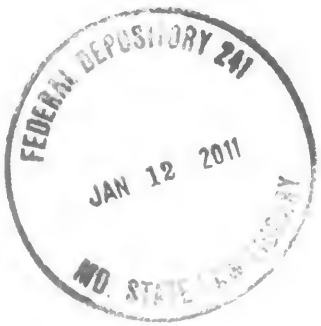

# Federal Register

12–13–10 Monday
Vol. 75 No. 238 Dec. 13, 2010





UNITED STATES GOVERNMENT PRINTING OFFICE


# Federal Register

12–13–10 Monday
Vol. 75 No. 238 Dec. 13, 2010

Pages 77521–77748

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov*.

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 75 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| **Subscriptions:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |
| **Single copies/back copies:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |
| **FEDERAL AGENCIES** | |
| **Subscriptions:** | |
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

Printed on recycled paper.

# Contents

Federal Register

Vol. 75, No. 238

Monday, December 13, 2010

**Agency for Healthcare Research and Quality**
NOTICES
Priority Setting for CHIPRA Pediatric Quality Measures Program:
Correction, 77642

**Agricultural Marketing Service**
RULES
National Organic Program:
Amendments to National List of Allowed and Prohibited Substances (Crops and Processing), 77521–77524
PROPOSED RULES
Continuance Referenda:
Nectarines, Pears, and Peaches Grown in California, 77563–77564
Final Free and Restricted Percentages for 2010–2011 Crop Year for Tart Cherries:
Tart Cherries Grown in States of Michigan, et al., 77564–77569
Regulations Issued Under Export Grape and Plum Act:
Revision to Minimum Requirements, 77561–77563
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77611–77612
Reestablishment of Plant Variety Protection Board, 77612–77613

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77606–77607
Privacy Act; Systems of Records, 77607–77611

**Army Department**
NOTICES
Intents To Grant Exclusive Licenses:
U.S. Army Owned Inventions to Polymer Processing Institute, 77624

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Broadcasting Board of Governors**
NOTICES
Meetings; Sunshine Act, 77613

**Centers for Disease Control and Prevention**
NOTICES
Infectious Diseases and Circumstances Relevant to Notification Requirements, 77642–77644
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Pregnancy Risk Assessment Monitoring System, 77645

**Civil Rights Commission**
NOTICES
Meetings; Sunshine Act, 77613

**Coast Guard**
RULES
Traffic Separation Schemes:
Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA, and Cape Fear River, NC, 77529–77535

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77613–77614

**Commodity Futures Trading Commission**
PROPOSED RULES
Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index:
Commission Certification Procedures, 77588–77595
General Regulations and Derivatives Clearing Organizations, 77576–77588

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 77623–77624

**Defense Department**
*See* Army Department
RULES
Federal Acquisition Regulation:
Federal Acquisition Circular 2005–47; Introduction, 77722–77723
Federal Acquisition Circular 2005–47; Small Entity Compliance Guide, 77745–77747
HUBZone Program Revisions, 77727–77733
Limitation on Pass-Through Charges, 77741–77745
Notification of Employee Rights Under the National Labor Relations Act, 77723–77726
Preventing Abuse of Interagency Contracts, 77733–77737
Small Disadvantaged Business Self-Certification, 77737–77739
Technical Amendments, 77745
Uniform Suspension and Debarment Requirement, 77739–77741

**Department of Transportation**
*See* Pipeline and Hazardous Materials Safety Administration

**Education Department**
NOTICES
Applications for New Awards for 2011 Fiscal Year:
National Institute on Disability and Rehabilitation Research; Small Business Innovation Research Program, 77624–77629
Inviting Applications for New Awards for 2011 Fiscal Year:
National Institute on Disability and Rehabilitation Research, etc., 77629–77633

**Employment and Training Administration**
NOTICES
Affirmative Determination Regarding Application for Reconsideration:
Vaughn Furniture Company, Galax, VA, 77664
Affirmative Determinations Regarding Applications for Reconsideration:
Ananke Inc., Providence, RI, 77664
Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance:
Frank Russell Co. et al., Tacoma, WA, 77665
General Motors Co. Technical Center et al., Warren, MI, 77666
Honeywell International, Inc. Automation and Control Solutions Division et al., Rock Island, IL, 77664–77665
Polaris Industries et al., Osceola, WI, 77666
Whirlpool Corp. et al., Fort Smith, AR, 77665
Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, 77666–77669
Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, 77669–77670
Revised Determinations on Reconsideration:
Sojitz Corp. of America, Seattle, WA, 77670–77671
SuperMedia, LLC, Troy, LLC, 77670

**Environmental Protection Agency**
RULES
Finding of Substantial Inadequacy and SIP Call:
Authority To Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions, 77698–77719
PROPOSED RULES
Approvals and Promulgations of Implementation Plans and Designations of Areas for Air Quality Planning Purposes:
Rome, GA; Determination of Attaining Data for 1997 Annual Fine Particulate Standards, 77595–77597
NOTICES
Approvals of Test Marketing Exemptions for Certain New Chemicals, 77634–77635
Cancellation Orders for Certain Pesticide Registrations:
Ethofumesate and Monosodium Methanearsonate; Correction, 77635–77636
Meetings:
Public Information Exchange on EPA Nanomaterial Case Studies, 77636–77637

**Executive Office of the President**
*See* Science and Technology Policy Office

**Federal Aviation Administration**
RULES
Special Conditions:
Sikorsky Aircraft Corp. Model S–92A Helicopter; Installation of Search and Rescue Automatic Flight Control System, 77524–77528
PROPOSED RULES
Airworthiness Directives:
General Electric Co. CF6 Series Turbofan Engines, 77570–77572
Proposed Revisions of Class E Airspace:
Platinum AK, 77572–77573
Savoonga, AK, 77574–77576
Shungnak AK, 77573–77574
Special Conditions:
Gulfstream Model GVI Airplane; Electronic Flight Control System Mode Annunciation, 77569–77570
NOTICES
Noise Exposure Maps:
Manchester-Boston Regional Airport; Manchester, NH, 77693–77694

**Federal Communications Commission**
PROPOSED RULES
Allocations and Designations of Spectrums for Fixed-Satellite Services:
37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands; Correction, 77602

**Federal Emergency Management Agency**
PROPOSED RULES
Proposed Flood Elevation Determinations, 77598–77602

**Federal Reserve System**
NOTICES
Changes in Bank Control:
Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction, 77637–77638
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 77638

**Federal Trade Commission**
NOTICES
Requests for Early Termination of Waiting Period Under Premerger Notification Rules, 77638–77641

**Fish and Wildlife Service**
NOTICES
Endangered and Threatened Wildlife and Plants:
Incidental Take Permit Extension; Proposed Low-Effect Habitat Conservation Plan; Deltona Family YMCA, Volusia County, FL, 77651–77652

**Food and Drug Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Color Additive Certification Requests and Recordkeeping, 77645–77647
Meetings:
Medical Device User Fee Program; Request for Notification of Patient and Consumer Advocacy Group Intentions to Participate, 77647–77648

**Foreign-Trade Zones Board**
NOTICES
Proposed Foreign-Trade Zones Under Alternative Site Framework:
Terrebonne Parish, LA; Application Filed, 77614–77615

**Forest Service**
NOTICES
Meetings:
Gogebic Resource Advisory Committee, 77613

**General Services Administration**
RULES
Federal Acquisition Regulation:
Federal Acquisition Circular 2005–47; Introduction, 77722–77723
Federal Acquisition Circular 2005–47; Small Entity Compliance Guide, 77745–77747
HUBZone Program Revisions, 77727–77733
Limitation on Pass-Through Charges, 77741–77745
Notification of Employee Rights under the National Labor Relations Act, 77723–77726

Preventing Abuse of Interagency Contracts, 77733–77737
Small Disadvantaged Business Self-Certification, 77737–77739
Technical Amendments, 77745
Uniform Suspension and Debarment Requirement, 77739–77741

**Geological Survey**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Assessment of the Business Requirements and Benefits of Enhanced National Elevation Data, 77652

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
NOTICES
Findings of Research Misconduct, 77641–77642

**Health Resources and Services Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77648–77649

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency

**Housing and Urban Development Department**
NOTICES
Buy American Exceptions Under 2009 American Recovery and Reinvestment Act, 77650–77651

**Interior Department**
*See* Fish and Wildlife Service
*See* Geological Survey
*See* Land Management Bureau
*See* National Park Service

**International Boundary and Water Commission, United States and Mexico**
NOTICES
Environmental Assessments; Availability, etc.:
Arroyo Colorado South Levee Rehabilitation Project in Cameron and Hidalgo Counties, TX, 77662

**International Trade Administration**
NOTICES
Extensions of Time Limits for Final Results of Antidumping Duty Administrative Reviews:
Corrosion-Resistant Carbon Steel Flat Products from Republic of Korea, 77615

**International Trade Commission**
NOTICES
Investigations:
Certain Printing and Imaging Devices and Components Thereof, 77662–77663

**Labor Department**
*See* Employment and Training Administration
*See* Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities: Proposals, Submissions, and Approvals, 77663–77664

**Land Management Bureau**
NOTICES
Environmental Impact Statements; Availability, etc.:
Battle Mountain District, NV, 77652–77654
Pattern Energy Group Ocotillo Express Wind Energy Project, Imperial County, CA, 77654–77655
Proposed Supplementary Rules for Public Lands:
Saguache, Alamosa, Rio Grande, Conejos, and Costilla Counties, CO, 77655–77657
Public Land Orders:
No. 7754; Extension of Public Land Order No. 6818, Nevada, 77658–77659
No. 7755; Withdrawal of Public Lands and Reserved Federal Minerals for Ash Meadows National Wildlife Refuge, NV, 77658
Realty Actions:
Recreation and Public Purposes Act Classification for Conveyance of Public Lands in San Juan County, UT, 77659
Stays of Filings of Plats, 77659–77660

**Mexico and United States, International Boundary and Water Commission**
*See* International Boundary and Water Commission, United States and Mexico

**National Aeronautics and Space Administration**
RULES
Federal Acquisition Regulation:
Federal Acquisition Circular 2005–47; Introduction, 77722–77723
Federal Acquisition Circular 2005–47; Small Entity Compliance Guide, 77745–77747
HUBZone Program Revisions, 77727–77733
Limitation on Pass-Through Charges, 77741–77745
Notification of Employee Rights under the National Labor Relations Act, 77723–77726
Preventing Abuse of Interagency Contracts, 77733–77737
Small Disadvantaged Business Self-Certification, 77737–77739
Technical Amendments, 77745
Uniform Suspension and Debarment Requirement, 77739–77741
NOTICES
National Environmental Policy Act:
Scientific Balloon Program, 77673–77674

**National Credit Union Administration**
NOTICES
Meetings; Sunshine Act, 77674

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Arts Advisory Panel, 77674–77675

**National Institutes of Health**
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 77650
National Institute of Diabetes and Digestive and Kidney Diseases, 77649–77650

**National Oceanic and Atmospheric Administration**
**RULES**
Endangered and Threatened Wildlife and Plants:
Take Prohibitions for Threatened Southern Distinct Population Segment of North American Green Sturgeon, 77528–77529
Fisheries of Exclusive Economic Zone Off Alaska:
Steller Sea Lion Protection Measures for Bering Sea and Aleutian Islands Groundfish Fisheries, 77535–77560
**PROPOSED RULES**
Endangered and Threatened Species:
90-Day Finding on Petitions to Delist Eastern Distinct Population Segment of Steller Sea Lion, 77602–77605
**NOTICES**
Application Requests:
Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council, 77615–77616
Applications for Permit Amendments:
Marine Mammals (File No. 14334), 77616
Requesting Nominations for Marine Protected Areas Federal Advisory Committee, 77617
Taking of Marine Mammals Incidental to Specified Activities:
Construction of East Span of San Francisco-Oakland Bay Bridge, 77617–77623

**National Park Service**
**NOTICES**
National Register of Historic Places:
Notification of Pending Nominations and Related Actions, 77660–77662
Pending Nominations and Related Actions, 77660
National Register of Historic Places; Correction:
Pending Nominations and Related Actions, 77662

**Nuclear Regulatory Commission**
**NOTICES**
Confirmatory Orders:
AREVA NP, Inc., 77675–77677
Exemptions:
Southern Nuclear Operating Co., Inc.; Edwin I Hatch Nuclear Plant (Unit No. 2), 77677–77679

**Occupational Safety and Health Administration**
**NOTICES**
Expansion of Scope of NRTL Recognition of MET Laboratories, Inc.; Correction of Scope of NRTL Recognition of FM Approvals, LLC, 77671–77673

**Pipeline and Hazardous Materials Safety Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 77694–77695

**Science and Technology Policy Office**
**NOTICES**
Meetings:
President's Council of Advisors on Science and Technology, 77679–77680

**Securities and Exchange Commission**
**NOTICES**
Meetings; Sunshine Act, 77680–77681
Self-Regulatory Organizations; Proposed Rule Changes:
New York Stock Exchange LLC, 77687–77689
NYSE Amex LLC, 77685–77687
NYSE Arca, Inc., 77681–77685, 77689–77691

**Small Business Administration**
**NOTICES**
Revocation of License of Small Business Investment Company, 77691
Surrender of License of Small Business Investment Company, 77691

**Tennessee Valley Authority**
**NOTICES**
Douglas and Nolichucky Tributary Reservoirs Land Management Plan:
Cocke, Greene, Hamblen, Jefferson, and Sevier Counties, TN, 77691–77693

**Transportation Department**
*See* Federal Aviation Administration
*See* Pipeline and Hazardous Materials Safety Administration

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 77698–77719

**Part III**
Defense Department, 77722–77747
General Services Administration, 77722–77747
National Aeronautics and Space Administration, 77722–77747

---

**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.


**7 CFR**
205.....77521
**Proposed Rules:**
35.....77561
916.....77563
917.....77563
930.....77564

**14 CFR**
29.....77524
**Proposed Rules:**
25.....77569
39.....77570
71 (3 documents) .....77572, 77573, 77574

**15 CFR**
902.....77528

**17 CFR**
**Proposed Rules:**
1.....77576
30.....77588
39.....77576

**33 CFR**
167.....77529

**40 CFR**
52.....77698
**Proposed Rules:**
52.....77595

**44 CFR**
**Proposed Rules:**
67.....77598

**47 CFR**
**Proposed Rules:**
25.....77602

**48 CFR**
Chapter 1 (2 documents).....77722, 77745
1.....77723
2 (4 documents) .....77723, 77727, 77733, 77737
3.....77745
4.....77733
5.....77745
7.....77745
8.....77733
9 (2 documents) .....77733, 77739
10.....77745
15.....77741
17.....77733
18.....77733
19 (2 documents) .....77727, 77737
22.....77723
31.....77741
33.....77727
35.....77733
41.....77733
52 (5 documents) .....77723, 77727, 77737, 77739, 77741

**50 CFR**
679.....77535
**Proposed Rules:**
223.....77602

# Rules and Regulations

Federal Register
Vol. 75, No. 238
Monday, December 13, 2010



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 205**

**[Document Number AMS–TM–09–0003; TM–08–06FR]**

**RIN 0581–AC91**

## National Organic Program; Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to enact six recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) from November 30, 2007, and May 22, 2008. This final rule adds aqueous potassium silicate and sodium carbonate peroxyhydrate, along with any restrictive annotations, for use in organic crop production, and adds gellan gum, fortified cooking wine—Marsala, fortified cooking wine—sherry, and tragacanth gum, along with any restrictive annotations, for use in organic handling. This final rule also removes the listing for glycerine oleate (glycerol monooleate) as the use exemption for this substance as a synthetic inert ingredient in organic crop production expired on December 31, 2006.

**DATES:** *Effective Date:* This rule becomes effective December 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Director, Standards Division, *Telephone:* (202) 720–3252; *Fax:* (202) 205–7808.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) [7 CFR part 205], the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501 *et seq.*), (OFPA), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling must also be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended thirteen times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 FR 61217), June 7, 2006 (71 FR 32803), September 11, 2006 (71 FR 53299), June, 27, 2007 (72 FR 35137), October 16, 2007 (72 FR 58469), December 10, 2007 (72 FR 69569), December 12, 2007 (72 FR 70479), September 18, 2008 (73 FR 54057), October 9, 2008 (73 FR 59479), July 6, 2010 (75 FR 38693), and August 24, 2010 (75 FR 51919). Additionally, a proposed amendment to the National List was published on November 8, 2010 (75 FR 68505).

This final rule amends the National List to enact six recommendations submitted to the Secretary by the NOSB on November 30, 2007, and May 22, 2008, and removes the listing of one substance, as its use exemption has expired.

### II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

*Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production*

This final rule amends paragraph (a) of § 205.601 of the National List regulations by adding new paragraph (a)(8) for the addition of one substance as follows: Sodium carbonate peroxyhydrate (CAS #–15630–89–4)—Federal law restricts the use of this substance in food crop production to approved food uses identified on the product label.

This final rule amends paragraphs (e) and (i) of § 205.601 by: (1) Redesignating paragraphs (e)(2) through (e)(9), and paragraphs (i)(1) through (i)(11), as paragraphs (e)(3) through (e)(10) and (i)(2) through (i)(12), respectively; and (2) adding new paragraphs (e)(2) and (i)(1) to add one substance as follows: aqueous potassium silicate (CAS #–1312–76–1)—the silica used in the manufacture of potassium silicate must be sourced from naturally occurring sand.

This final rule amends paragraph (m)(2) of § 205.601 of the National List regulations by: (1) Removing the expired exemption for glycerine oleate (glycerol monooleate) (CAS #–37220–82–9)—for use only until December 31, 2006; and (2) redesignating paragraph (m)(2)(ii) as new paragraph (m)(2).

*Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as "Organic" or "Made With Organic (Specified Ingredients or Food Group(s))."*

This final rule amends § 205.605(a) of the National List regulations by adding one substance in alphabetical order as follows: Gellan gum (CAS #–71010–52–1)—high-acyl form only.

*Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as "Organic."*

This final rule amends § 205.606 of the National List regulations by: (1) Redesignating paragraphs (g) through (t) and (u) through (w) as paragraphs (h) through (u) and (w) through (y); and (2) adding new paragraph (g) for the addition of two substances as follows: Fortified cooking wines, (1) Marsala, (2) sherry; and (3) adding new paragraph (v) for the addition of one

substance as follows: Tragacanth gum (CAS #–9000–65–1).

**III. Related Documents**

Three notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this final rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 72 FR 10971, March 12, 2007, (Gellan gum); (2) 72 FR 58046, October 12, 2007, (Potassium silicate, Sodium carbonate peroxyhydrate, Gellan gum); and (3) 73 FR 18491, April 4, 2008, (Marsala cooking wine, Sherry cooking wine, Tragacanth gum). The recommendation to allow the use of the six substances in this final rule, and the removal of the expired substance, was published as a proposed rule on June 3, 2009 (74 FR 26591).

**IV. Statutory and Regulatory Authority**

The OFPA authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

*A. Executive Order 12866*

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

*B. Executive Order 12988*

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule would be to allow the use of additional substances in agricultural production and handling. This action would modify the regulations published in the final rule and would provide small entities with more tools to use in day-to-day farming and handling operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to USDA Economic Research Service (ERS) data based on information from USDA-accredited certifying agents, the number of certified U.S. organic crop and livestock operations totaled nearly 13,000 and certified organic acreage exceeded 4.8 million acres in 2008.[1] ERS, based upon the list of certified operations maintained by the National Organic Program, estimated the number of certified handling operations was 3,225 in 2007.[2] AMS believes that most of these entities would be considered

[1] U.S. Department of Agriculture, Economic Research Service, 2009. *Data Sets: U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008. http://www.ers.usda.gov/Data/Organic/.*

[2] U.S. Department of Agriculture, Economic Research Service, 2009. *Data Sets: Procurement and Contracting by Organic Handlers: Documentation. http://www.ers.usda.gov/Data/OrganicHandlers/Documentation.htm.*

small entities under the criteria established by the SBA.

The U.S. sales of organic food and beverages have grown from $3.6 billion in 1997 to nearly $21.1 billion in 2008.[3] The organic industry is viewed as the fastest growing sector of agriculture, representing over 3 percent of overall food sales in 2009. Between 1990 and 2008, organic food sales have historically demonstrated a growth rate between 15 to 24 percent each year. In 2009, organic food sales grew 5.1%.[4]

In addition, USDA has 98 accredited certifying agents (ACAs) who provide certification services to producers and handlers under the NOP. A complete list of names and addresses of ACAs may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop*. The AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

*D. Paperwork Reduction Act*

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

The AMS is committed to compliance with the E–Government Act, to promote the use of the Internet and other information technologies increased opportunities for citizen access to Government information and services, and for other purposes.

*E. Received Comments on Proposed Rule*

AMS received comments from 9 submitters on the proposed rule TM–08–06. Comments were received from handlers, a trade association, a non-profit organization, an accredited certifying agent, and an industry group. There was support among the comments for the allowance of each of the six proposed use exemptions. However, a few of those supporting comments suggested modifications to the proposed amendments. One comment also expressed support for the removal of the expired listing for glycerol monooleate. One additional commenter expressed blanket opposition to allowing these substances in organic production and handling, but did not offer any specific objections. The comments can be viewed at: *http://www.regulations.gov/*.

One comment in favor of the addition of aqueous potassium silicate to § 205.601 requested that the NOP clarify what measures would be used to verify and enforce the source restriction, and what oversight and technical assistance the NOP will provide to certifying agents and their subcontractors. The comment refers to the annotation that the silica used in the manufacture of potassium silicate must be sourced from naturally occurring sand. The National List contains a number of substances which have annotations that specify source or processing restrictions, particularly for handling substances. The NOP has previously advised that ACAs obtain written documentation from the manufacturer(s) of the input product(s) to discern whether a substance/product conforms to restrictive annotations.

One comment in favor of adding tragacanth gum to § 205.606 requested that the NOSB further consider the impact of pesticides and fertilizers in the production of nonorganic ingredients, such as tragacanth gum and wine grapes (in reference to the cooking wines). The commenter cited the criteria established in 7 U.S.C. 6518(m), which includes the probability of environmental contamination during manufacture, use, misuse, or disposal of the substance, effects of the substance on biological and chemical interactions in the agroecosystem, and its compatibility with a system of sustainable agriculture. During the May 2008 meeting, the Board discussed how to consider the impact of conventional production methods for substances petitioned for addition to § 205.606. In the context of wine grapes used to produce fortified cooking wines, the Board clarified that its evaluation covered the production and use of the finished wine product and not the production of the raw ingredients in the wine. Thus, in accordance with 7 U.S.C. 6518(m), the Board considered potential adverse effects upon the agroecosystem from the manufacture, use and disposal of the fortified cooking wine and not the individual ingredients in the wine. The Board determined that the fortified cooking wines, sherry and Marsala, satisfied the OFPA criteria in section 6518(m). In regards to tragacanth gum, the Board reviewed the production process for the gum and found it to be identical to a water extracted gum that is currently listed in § 205.606. At its May 20–22, 2008, meeting in Baltimore, MD, the NOSB evaluated tragacanth gum against the criteria established under 7 U.S.C. 6517 and 6518, and concluded that tragacanth gum is consistent with the OFPA evaluation criteria. Members of the public are always invited to submit comments regarding specific production concerns of any particular substance that has been petitioned for addition to § 205.606. The NOP solicits such comments in notices of NOSB meetings and proposed rules, both of which are published in the **Federal Register** and on the NOP Web site.

**Changes Based on Comments**

*Gellan Gum*

Several comments addressed gellan gum. These comments favored the addition of gellan gum to § 205.605, and several specifically referenced support for the listing of gellan gum as nonsynthetic substance on § 205.605(a). One comment in support of the exemption for gellan gum, recommended an annotation to allow only the native form of gellan gum, *i.e.*, the high-acyl form. The comment stated that low-acyl gellan gum is chemically modified by alkali treatment prior to alcohol precipitation and is, therefore, synthetic. The comment indicated that a restriction of the exemption to the high-acyl form aligns with the intent of the NOSB as conveyed during the November 27–30, 2007 meeting discussion.

There are 2 forms of gellan gum: High- and low-acyl. To manufacture the low-acyl form, an alkali is added and the temperature is raised to remove acetyl groups. A strong acid is then used to lower the pH and the gum is recovered from solution by clarification and precipitation. The high-acyl form is not subject to deacetylation with an alkali salt. After fermentation, the high-acyl form is precipitated out of solution with isopropyl alcohol.

We believe the different manufacturing processes for high- and low-acyl gellan gum merits a revision to the proposed amendment to clarify that only the high-acyl form of gellan gum may be classified as nonsynthetic. Deacetylation, the removal of acetyl group(s) from molecules, results in chemical change. Thus, in accordance with the NOP definition of synthetic, the resulting substance would be synthetic. Based upon this reasoning, we agree with the comment that the recommendation to add gellan gum as a nonsynthetic substance pertains only to the high-acyl form. Therefore, we have amended the listing by adding the annotation "high-acyl form only."

[3] Dimitri, C., and L. Oberholtzer. 2009. *Marketing U.S. Organic Foods: Recent Trends from Farms to Consumers*, Economic Information Bulletin No. 58, U.S. Department of Agriculture, Economic Research Service, *http://www.ers.usda.gov/Publications/EIB58*.

[4] Organic Trade Association's *2010 Organic Industry Survey*, *http://www.ota.com*.

**Changes Requested But Not Made**

*Fortified Cooking Wines—Marsala and Sherry*

Two comments addressed Marsala and sherry fortified cooking wines. One comment did not support the listing on the basis that organic versions of these cooking wines are commercially available, but failed to provide documentation to support this claim. One comment requested an annotation to prohibit fortified wines that contain synthetic sulfites, such as sulfur dioxide or potassium metabisulfite. The comment referenced the restriction of sulfur dioxide to wines that are "made with organic grapes" in questioning the legal basis for allowing cooking wines containing sulfites to be listed on § 205.606 and, therefore, to be used to produce "organic" products.

In its discussion at the May 20–22, 2008 meeting, the NOSB acknowledged that the manufacturer cited in the fortified cooking wine petitions did not add sulfites to its sherry and Marsala cooking wines. However, the NOSB did not recommend prohibiting sherry or Marsala cooking wines which contain added sulfites. We believe the recommendation is consistent with OFPA, § 6510(a)(3), which prohibits the addition of sulfites except in the production of wine. Therefore, we are not adopting the proposed annotation to prohibit conventional forms of Marsala and sherry fortified cooking wines which contain added sulfites.

*F. Effective Date*

This final rule reflects recommendations submitted to the Secretary by the NOSB. The substances being added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are crucial to organic crop production and processing operations, producers should be able to use them in their operations as soon as possible. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553(d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 205**

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

■ 2. Section 205.601 is amended by:
■ A. Adding new paragraph (a)(8);
■ B. Redesignating paragraphs (e)(2) through (e)(9) as (e)(3) through (e)(10) and adding new paragraph (e)(2);
■ C. Redesignating paragraphs (i)(1) through (i)(11) as (i)(2) through (i)(12) and adding new paragraph (i)(1); and
■ D. Revising paragraph (m)(2).
The additions and revisions read as follows:

**§ 205.601 Synthetic substances allowed for use in organic crop production.**

* * * * *

(a) * * *

(8) Sodium carbonate peroxyhydrate (CAS #–15630–89–4)—Federal law restricts the use of this substance in food crop production to approved food uses identified on the product label.

* * * * *

(e) * * *

(2) Aqueous potassium silicate (CAS #–1312–76–1)—the silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

* * * * *

(i) * * *

(1) Aqueous potassium silicate (CAS #–1312–76–1)—the silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

* * * * *

(m) * * *

(2) EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers.

* * * * *

■ 2. Section 205.605 is amended by adding one new substance in alphabetical order to paragraph (a) to read as follows:

**§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."**

* * * * *

(a) * * *

* * * * *

Gellan gum (CAS # 71010–52–1)—high-acyl form only.

* * * * *

■ 3. Section 205.606 is amended by:
■ A. Redesignating paragraphs (g) through (t) and (u) through (w) as paragraphs (h) through (u) and (w) through (y) respectively;
■ B. Adding new paragraphs (g) and (v) to read as follows:

**§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as "organic."**

* * * * *

(g) Fortified cooking wines.

(1) Marsala.

(2) Sherry.

* * * * *

(v) Tragacanth gum (CAS #–9000–65–1).

* * * * *

Dated: December 7, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31196 Filed 12–10–10; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 29

**[Docket No. SW023; Special Conditions No. 29–023–SC]**

### Special Conditions: Sikorsky Aircraft Corporation Model S–92A Helicopter; Installation of a Search and Rescue (SAR) Automatic Flight Control System (AFCS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Sikorsky Aircraft Corporation (Sikorsky) model S–92A helicopter. This helicopter, as modified by Sikorsky, will have novel or unusual design features associated with installing an optional SAR AFCS. The applicable airworthiness standards do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to show a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is December 3, 2010. We must receive your comments by February 11, 2011.

**ADDRESSES:** You must mail or deliver two copies of your comments to: Federal

Aviation Administration, Rotorcraft Directorate, Attn: Special Conditions Docket (ASW–111), Docket No. SW023, 2601 Meacham Blvd., Fort Worth, Texas 76137. You must mark your comments: Docket No. SW023. You can inspect comments in the Docket on weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** FAA, Aircraft Certification Service, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), Attn: John VanHoudt, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5167, facsimile (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

**Background and Discussion**

On July 30, 2007, Sikorsky applied for a change to Type Certificate (TC) No. R00024BO to install an optional SAR AFCS in the model S–92A helicopter. These special conditions were recently developed due to the intended function of the S–92A SAR AFCS not being completely defined until late in the certification program. The model S–92A is a transport category helicopter certified to Category A requirements when configured for more than nine passengers and Category A or B requirements when configured for nine or less passengers. This helicopter is also certified for instrument flight under the requirements of Appendix B of 14 CFR part 29, Amendment 29–47.

The use of dedicated AFCS upper modes, in which a fully coupled autopilot provides operational SAR profiles, is needed for SAR operations conducted over water in offshore areas clear of obstructions. The SAR modes enable the helicopter pilot to fly fully coupled maneuvers, to include predefined search patterns during cruise flight, and to transition from cruise flight to a stabilized hover and departure (transition from hover to cruise flight). The SAR AFCS also includes an auxiliary crew control that allows another crewmember (such as a hoist operator) to have limited authority to control the helicopter's longitudinal and lateral position during hover operations.

Flight operations conducted over water at night may have an extremely limited visual horizon with little visual reference to the surface even when conducted under Visual Meteorological Conditions (VMC). Consequently, the certification requirements for SAR modes must meet Appendix B to 14 CFR part 29. While Appendix B to 14 CFR part 29 prescribes airworthiness criteria for instrument flight, it does not consider operations below instrument flight minimum speed ($V_{MINI}$), whereas the SAR modes allow for coupled operations at low speed, all-azimuth flight to zero airspeed (hover).

Since SAR operations have traditionally been a public use mission, the use of SAR modes in civil operations requires special airworthiness standards (special conditions) to ensure that a level of safety consistent with Category A and Instrument Flight Rule (IFR) certification is maintained. In this regard, 14 CFR part 29 lacks adequate airworthiness standards for AFCS SAR mode certification to include flight characteristics, performance, and installed equipment and systems.

**Type Certification Basis**

Under 14 CFR 21.101, Sikorsky must show the S–92A, as changed, continues to meet the applicable provisions of the rules incorporated by reference in TC No. R00024BO or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the TC are commonly referred to as the "original type certification basis." The regulations incorporated by reference in R00024BO are as follows:

(a) 14 CFR part 29 Amendments 29–1 to 29–47, inclusive.

(b) 14 CFR part 36 Amendment 20.

(c) Equivalent Safety Findings:

(1) Number TC0309BO–R/F–1.

(i) 14 CFR 29.173 Static longitudinal stability.

(ii) 14 CFR 29.175 Demonstration of static longitudinal stability.

(2) Number TC0309BO–R/F–4.

(i) 14 CFR 29.177 Static directional stability.

(3) Number TC0309BO–R/P–1.

(i) 14 CFR 29.1305(a)(24) Power Plant Instruments.

(4) Number TC0309BO–R/P–5.

(i) 14 CFR 29.1181(a)(4) Designated Fire Zones; Regions Included.

(d) Special Conditions:

(1) No. 29–011–SC for Dual-Engine 30 Minute Power.

(2) No. 29–008–SC for High Intensity Radiated Frequency.

(e) Noise Control Act of 1972.

(f) Compliance with the following optional requirements has been established: Ditching provisions § 29.563 including §§ 29.801 and 29.807(d), and excluding §§ 29.1411, 29.1415, and 29.1561 when emergency flotation system is installed. For extended over-water operations, compliance with the operating rules and §§ 29.1411, 29.1415, and 29.1561 must be shown.

In addition to the applicable airworthiness standards and special conditions, the Sikorsky model S–92A must comply with the noise certification requirements of 14 CFR part 36.

**Regulatory Basis for Special Conditions**

If the Administrator finds the applicable airworthiness standards (that is, 14 CFR part 29) do not contain adequate or appropriate safety standards for the Sikorsky model S–92A helicopter because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the TC for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same TC be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model.

**Novel or Unusual Design Features**

The Sikorsky model S–92A helicopter will incorporate the following novel or unusual design features:

The SAR system is composed of a navigation computer with SAR modes, an AFCS that provides coupled SAR functions, hoist operator control, a hover speed reference system, and two radio altimeters. The AFCS coupled SAR functions include:

(a) Hover hold at selected height above the surface.

(b) Ground speed hold.

(c) Transition down and hover to a waypoint under guidance from the navigation computer.

(d) SAR pattern, transition down, and hover near a target over which the helicopter has flown.

(e) Transition up, climb, and capture a cruise height.

(f) Capture and track SAR search patterns generated by the navigation computer.

(g) Monitor the preselected hover height with automatic increase in collective if the aircraft height drops below the safe minimum height.

These SAR modes are intended to be used over large bodies of water in areas clear of obstructions. Further, use of the modes that transition down from cruise to hover will include operation at airspeeds below $V_{MINI}$.

The SAR system only entails navigation, flight control, and coupled AFCS operation of the helicopter. The system does not include the extra equipment that may be required for over

water flight or external loads to meet other operational requirements.

**Comments Invited**

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will file in the special conditions docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring additional expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your mailed comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Conclusion**

This action affects only certain novel or unusual design features on one model of helicopter. It is not a rule of general applicability.

Normally, in adopting special conditions, the FAA provides notice and an opportunity for comment before issuing the final special conditions. However, because the delivery date of the Sikorsky model S–92A helicopter is imminent, we find that it is impracticable to provide prior notice because a delay would be contrary to the public interest. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

**Applicability**

These special conditions apply to the Sikorsky model S–92A helicopters. Should Sikorsky apply at a later date for a change to the TC to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

**List of Subjects in 14 CFR Part 29**

Aircraft, Aviation safety.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Sikorsky Aircraft Corporation model S–92A helicopters when the optional Search and Rescue (SAR) Automatic Flight Control System (AFCS) is installed:

In addition to the part 29 certification requirements for Category A and helicopter instrument flight (Appendix B), the following additional requirements must be met for certification of the SAR AFCS:

(a) *SAR Flight Modes.* The coupled SAR flight modes must provide:

(1) Safe and controlled flight in three axes (lateral and longitudinal position/speed and height/vertical speed) at all airspeeds from instrument flight minimum speed ($V_{MINI}$) to a hover (within the maximum demonstrated wind envelope).

(2) Automatic transition to the helicopter instrument flight (Appendix B) envelope as part of the normal SAR mode sequencing.

(3) A pilot-selectable Go-Around mode that safely interrupts any other coupled mode and automatically transitions to the helicopter instrument flight (Appendix B) envelope.

(4) A means to prevent unintended flight below a safe minimum height. Pilot-commanded descent below the safe minimum height is acceptable provided the alerting requirements in (b)(7)(i) are sufficient to alert the pilot of this descent below safe minimum height.

(b) *SAR Mode System Architecture.* To support the integrity of the SAR modes, the following system architecture is required:

(1) A system for limiting the engine power demanded by the AFCS when any of the automatic piloting modes are engaged, so FADEC power limitations, such as torque and temperature, are not exceeded.

(2) A system providing the aircraft height above the surface and final pilot-selected height at a location on the instrument panel in a position acceptable to the FAA that will make it plainly visible to and usable by any pilot at their station.

(3) A system providing the aircraft heading and the pilot-selected heading at a location on the instrument panel in a position acceptable to the FAA that will make it plainly visible to and usable by any pilot at their station.

(4) A system providing the aircraft longitudinal and lateral ground speeds and the pilot-selected longitudinal and lateral ground speeds when used by the AFCS in the flight envelope where airspeed indications become unreliable. This information must be presented at a location on the instrument panel in a position acceptable to the FAA that is plainly visible to and usable by any pilot at their station.

(5) A system providing wind speed and wind direction when automatic piloting modes are engaged or transitioning from one mode to another.

(6) A system that monitors for flight guidance deviations and failures with an appropriate alerting function that enables the flight crew to take appropriate corrective action.

(7) The alerting system must provide visual or aural alerts, or both, to the flight crew under any of the following conditions:

(i) When the stored or pilot-selected safe minimum height is reached.

(ii) When a SAR mode system malfunction occurs.

(iii) When the AFCS changes modes automatically from one SAR mode to another.

**Note:** For normal transitions from one SAR mode to another, a single visual or aural alert may suffice. For a SAR mode malfunction or a mode having a time-critical component, the flight crew alerting system must activate early enough to allow the flight crew to take timely and appropriate action. The alerting system means must be designed to alert the flight crew in order to minimize crew errors that could create an additional hazard.

(8) The SAR system hoist operator control is considered a flight control with limited authority and must comply with the following:

(i) The hoist operator control must be designed and located to provide for convenient operation and to prevent confusion and inadvertent operation.

(ii) The helicopter must be safely controllable by the hoist operator control throughout the range of that control.

(iii) The hoist operator control may not interfere with the safe operation of the helicopter.

(iv) Pilot and copilot flight controls must be able to smoothly override the control authority of the hoist operator control, without exceptional piloting skill, alertness, or strength, and without the danger of exceeding any other limitation because of the override.

(9) The reliability of the AFCS must be related to the effects of its failure.

The occurrence of any failure condition that would prevent continued safe flight and landing must be extremely improbable. For any failure condition of the AFCS which is not shown to be extremely improbable:

(i) The helicopter must be safely controllable and capable of continued safe flight without exceptional piloting skill, alertness, or strength. Additional unrelated probable failures affecting the control system must be evaluated.

(ii) The AFCS must be designed so that it cannot create a hazardous deviation in the flight path or produce hazardous loads on the helicopter during normal operation or in the event of a malfunction or failure, assuming corrective action begins within an appropriate period of time. Where multiple systems are installed, subsequent malfunction conditions must be evaluated in sequence unless their occurrence is shown to be improbable.

(10) A functional hazard assessment (FHA) and a system safety assessment must be provided to address the failure conditions associated with SAR operations. For SAR catastrophic failure conditions, changes may be required to the following:

(i) System architecture.

(ii) Software and complex electronic hardware design assurance levels.

(iii) HIRF test levels.

(iv) Instructions for continued airworthiness.

The assessments must consider all the systems required for SAR operations to include the AFCS, all associated AFCS sensors (for example, radio altimeter), and primary flight displays. Electrical and electronic systems with SAR catastrophic failure conditions (for example, AFCS) must comply with the § 29.1317(a)(4) High Intensity Radiated Field (HIRF) requirements.

(c) *SAR Mode Performance Requirements.*

(1) The SAR modes must be demonstrated in the requested flight envelope for the following minimum sea-state and wind conditions:

(i) *Sea State:* Wave height of 2.5 meters (8.2 feet), considering both short and long swells.

(ii) *Wind:* 25 knots headwind; 17 knots for all other azimuths.

(2) The selected hover height and hover velocity must be captured (to include the transition from one captured mode to another captured mode) accurately and smoothly and not exhibit any significant overshoot or oscillation.

(3) For any single failure or any combination of failures of the AFCS that is not shown to be extremely improbable, the recovery must not result in a loss of height greater than half of the minimum use height (MUH) with a minimum margin of 15 feet above the surface. MUH is the minimum height at which any SAR AFCS mode can be engaged.

(4) The SAR mode system must be usable up to the maximum certified gross weight of the aircraft or to the lower of the following weights:

(i) Maximum emergency flotation weight.

(ii) Maximum hover Out-of-Ground Effect (OGE) weight.

(iii) Maximum demonstrated weight.

(d) *Flight Characteristics.*

(1) The basic aircraft must meet all the part 29 airworthiness criteria for helicopter instrument flight (Appendix B).

(2) For SAR mode coupled flight below $V_{MINI}$, at the maximum demonstrated winds, the helicopter must be able to maintain any required flight condition and make a smooth transition from any flight condition to any other flight condition without requiring exceptional piloting skill, alertness, or strength, and without exceeding the limit load factor. This requirement also includes aircraft control through the hoist operator's control.

(3) For SAR modes at airspeeds below $V_{MINI}$ the following requirements of Appendix B to part 29 must be met and will be used as an extension to the IFR certification envelope of the basic aircraft:

(i) *Static Longitudinal Stability:* the requirements of paragraph IV of Appendix B are not applicable.

(ii) *Static Lateral-Directional Stability:* The requirements of paragraph V of Appendix B are not applicable.

(iii) *Dynamic Stability:* The requirements of paragraph VI of Appendix B are replaced with the following two paragraphs:

(A) Any oscillation must be damped and any aperiodic response must not double in amplitude in less than 10 seconds. This requirement must also be met with degraded upper mode(s) of the AFCS. An "upper mode" is a mode that utilizes a fully coupled autopilot to provide an operational SAR profile.

(B) After any upset, the AFCS must return the aircraft to the last commanded position within 10 seconds or less.

(4) With any of the upper mode(s) of the AFCS engaged the pilot must be able to manually recover the aircraft and transition to the normal (Appendix B) IFR flight profile envelope without exceptional skill, alertness, or strength.

(e) *One-Engine Inoperative (OEI) Performance Information.*

(1) The following performance information must be provided in the Rotorcraft Flight Manual Supplement (RFMS):

(i) OEI performance information and emergency procedures, providing the maximum weight that will provide a minimum clearance of 15 feet above the surface, following failure of the critical engine in a hover. The maximum weight must be presented as a function of the hover height for the temperature and pressure altitude range requested for certification. The effects of wind must be reflected in the hover performance information.

(ii) Hover OGE performance with the critical engine inoperative for OEI continuous and time-limited power ratings for those weights, altitudes, and temperatures for which certification is requested.

**Note:** These OEI performance requirements do not replace performance requirements that may be needed to comply with the airworthiness or operational standards (§ 29.865 or 14 CFR part 133) for external loads or human external cargo.

(f) *RFMS.*

(1) The RFMS must contain, at a minimum:

(i) Limitations necessary for safe operation of the SAR system to include:

(A) Minimum crew requirements.

(B) Maximum SAR weight.

(C) Engagement criteria for each of the SAR modes to include MUH (as determined in subparagraph (c)(3)).

(ii) Normal and emergency procedures for operation of the SAR system (to include operation of the hoist operator control), with AFCS failure modes, AFCS degraded modes, and engine failures.

(iii) Performance information:

(A) OEI performance and height-loss.

(B) Hover OGE performance information, utilizing OEI continuous and time-limited power ratings.

(C) The maximum wind envelope demonstrated in flight test.

(g) *Flight Demonstration.*

(1) Before approval of the SAR system, an acceptable flight demonstration of all the coupled SAR modes is required.

(2) The AFCS must provide fail-safe operations during coupled maneuvers. The demonstration of fail-safe operations must include a pilot workload assessment associated with manually flying the aircraft to an altitude greater than 200 feet above the surface and an airspeed of at least the best rate of climb airspeed ($V_y$).

(3) For any failure condition of the SAR system not shown to be extremely improbable, the pilot must be able to

make a smooth transition from one flight mode to another without exceptional piloting skill, alertness, or strength.

(4) Failure conditions that are not shown to be extremely improbable must be demonstrated by analysis, ground testing, or flight testing. For failures demonstrated in flight, the following normal pilot recovery times are acceptable:

(i) Transition modes (Cruise-to-Hover/Hover-to-Cruise) and Hover modes: Normal pilot recognition plus 1 second.

(ii) Cruise modes: Normal pilot recognition plus 3 seconds.

(5) All AFCS malfunctions must include evaluation at the low-speed and high-power flight conditions typical of SAR operations. Additionally, AFCS hard-over, slow-over, and oscillatory malfunctions, particularly in yaw, require evaluation. AFCS malfunction testing must include a single or a combination of failures (for example, erroneous data from and loss of the radio altimeter, attitude, heading, and altitude sensors) which are not shown to be extremely improbable.

(6) The flight demonstration must include the following environmental conditions:

(i) Swell into wind.

(ii) Swell and wind from different directions.

(iii) Cross swell.

(iv) Swell of different lengths (short and long swell).

Issued in Fort Worth, Texas, on December 3, 2010.

**Kimberly K. Smith,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2010–31188 Filed 12–10–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 902

**[Docket No. 070910507–0576–03]**

**RIN 0648–AV94**

## Endangered and Threatened Wildlife and Plants: Final Rulemaking To Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon; Permit and Reporting Requirements

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

**ACTION:** Final rule; approval of collection-of-information requirements.

**SUMMARY:** NMFS announces the approval of collection-of-information requirements contained in protective regulations established under the Endangered Species Act (ESA) for the threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris;* hereafter, Southern DPS). The intent of this final rule is to inform the public of the permitting and reporting requirements.

**DATES:** The amendment to 15 CFR 902.1 is effective January 12, 2011. The collection-of-information requirements in 50 CFR 223.210 are approved on January 12, 2011.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Assistant Regional Administrator, Protected Resources Division, Southwest Region (SWR), NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Melissa Neuman, NMFS SWR, 562–980–4115.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is also accessible at the Web site of the Office of the Federal Register: *http://www.gpoaccess.gov/fr/index.html.*

### Background

A final rule to establish protective regulations under section 4(d) of the ESA for the Southern DPS was published in the **Federal Register** on June 2, 2010 (75 FR 30714) (the final ESA 4(d) Rule). The final ESA 4(d) Rule, other than the collection-of-information requirements, went into effect on July 2, 2010. When the final rule was published, the Office of Management and Budget (OMB) had not yet approved the collection-of-information requirements under the Paperwork Reduction Act (PRA), and therefore the effective date of the permitting and reporting requirements in that rule was delayed. No public comments were received regarding the permitting and reporting requirements in the final ESA 4(d) Rule.

OMB approved the collection-of-information requirements contained in the final ESA 4(d) Rule on October 5, 2010. Accordingly, this final rule announces the approval January 12, 2011 of the collection-of-information requirements at 50 CFR 223.210, as published in the final ESA 4(d) Rule.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

### Classification

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

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule concerns the following collection-of-information requirements subject to the PRA and approved by OMB under control number 0648–0613: (1) Exception for Federal, State, or private-sponsored research or monitoring—written notification regarding Federal, State, or private-sponsored research or monitoring activities that meet the exception criteria in the ESA 4(d) Rule, to be submitted at least 60 days prior to the start of the research or monitoring activities, and regular reports summarizing project results and total numbers of takes of ESA listed species, to be submitted on a schedule to be determined by NMFS; (2) Exception for habitat restoration activities—written notification regarding habitat restoration activities that meet the exception criteria in the ESA 4(d) Rule, to be submitted at least 60 days prior to the start of the restoration project, and regular progress reports to be submitted on a schedule to be determined by NMFS; (3) Exception for emergency fish rescue activities—written reports regarding emergency fish rescue activities conducted under the ESA 4(d) Rule exception, to be submitted within 30 days after conducting emergency fish rescue activities; (4) Fishery Management and Evaluation Plans (FMEPs) for NMFS review and approval and biannual reports providing the number of green sturgeon taken in the fishery and an evaluation and summary of the effectiveness of the FMEP; (5) Tribal Fishery Management Plans (TFMPs) for NMFS review and approval; and (6) State ESA 4(d) research programs for NMFS review and approval and annual reports summarizing project results and the

number of green sturgeon taken directly or incidentally for each project under the NMFS-approved State ESA 4(d) research program.

The public reporting burden per response for this collection-of-information is estimated to average: (1) 40 hours to prepare a written notification describing Federal, State, or private-sponsored research or monitoring activities that comply with the ESA 4(d) Rule exception criteria and 5 hours to prepare reports summarizing those activities; (2) 40 hours to prepare a written notification describing habitat restoration activities that comply with the ESA 4(d) Rule exception criteria and 5 hours to prepare progress reports summarizing those activities; (3) 5 hours to prepare reports on emergency fish rescue activities for Southern DPS fish; (4) 40 hours for development of an FMEP and 5 hours to prepare the biannual reports; (5) 20 hours for development of a TFMP; and (6) 40 hours for development of a State ESA 4(d) research program and 5 hours to prepare the annual reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to the Assistant Regional Administrator, Protected Resources Division, SWR, NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**List of Subjects in 15 CFR Part 902**

Reporting and recordkeeping requirements.

Dated: December 8, 2010.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, NMFS amends 15 CFR part 902 as follows:

## 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, amend the table in paragraph (b), under the entry "50 CFR" by adding an entry for "223.210" 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 | |
| * * * * * | |
| 223.210 ..... | –0613 |
| * * * * * | |

[FR Doc. 2010–31216 Filed 12–10–10; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 167

**[Docket No. USCG–2010–0718]**

**RIN 1625–AB55**

## Traffic Separation Schemes: In the Approaches to Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA, and Cape Fear River, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** In this rule, the Coast Guard codifies traffic separation schemes in the approaches to Portland, ME; in the approaches to Boston, MA; in the approaches to Narragansett Bay, RI and Buzzards Bay, MA; and in the approaches to the Cape Fear River, NC. In addition, the Coast Guard updates the current regulations for the traffic separation scheme in the approaches to Chesapeake Bay, VA. The Coast Guard established these traffic separation schemes between 1978 and 2004 under authority of the Ports and Waterways Safety Act. The International Maritime Organization adopted these traffic separation schemes and describes them in their publication, "Ships Routeing," Ninth Edition, 2008. In addition, these traffic separation schemes are already shown on nautical charts and in the United States Coast Pilot published by the National Oceanic and Atmospheric Administration.

**DATES:** This interim rule is effective January 12, 2011. Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 28, 2010 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0718 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, contact Mr. George Detweiler, U.S. Coast Guard Office of Navigation Systems, telephone 202–372–1566, or e-mail *George.H.Detweiler@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents for Preamble**

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Abbreviations
III. Background
A. General
B. TSS History
C. Regulatory History
IV. Discussion of the Interim Rule
A. In the Approaches to Portland, ME
B. In the Approaches to Boston, MA
C. In the Approaches to Narragansett Bay, RI and Buzzards Bay, MA
D. In the Approaches to Chesapeake Bay, VA
E. In the Approaches to the Cape Fear River, NC
V. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property

H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

## I. Public Participation and Request for Comments

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

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0718), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rule" and insert "USCG–USCG–2010–0718" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

### *B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–USCG–2010–0718" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### *C. Privacy Act*

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

### *D. Public Meeting*

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

## II. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004
ATBA Area to be Avoided
DHS Department of Homeland Security
FR **Federal Register**
IMO International Maritime Organization
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
PARS Port Access Route Study
PWSA Ports and Waterways Safety Act
TSS Traffic Separation Scheme
U.S.C. United States Code

## III. Background

### *A. General*

In the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1221–1232, the Secretary of the Department in which the Coast Guard operates is granted authority to establish traffic separation schemes (TSSs), where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. This authority is delegated to the Commandant of the Coast Guard in Department of Homeland Security Delegation No. 0170.1.

The Coast Guard conducts a Port Access Route Study (PARS) to evaluate potential traffic density and the need for safe access routes for vessels before establishing a traffic separation scheme. We publish a notice of the PARS in the **Federal Register.** Through the PARS process, we seek public comment, hold public meetings when requested, confer with affected parties and consult with State and local entities to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing.

Under the provisions of the PWSA, we must publish a notice of proposed rulemaking if we contemplate establishing or amending a TSS. Likewise, we must publish a notice in the **Federal Register** when we do not seek to establish or amend a TSS as a result of the PARS.

In addition, we must notify the appropriate international organizations of TSS designations, such as the International Maritime Organization (IMO), and seek the cooperation of foreign states in making use of the TSS mandatory for vessels under their jurisdiction to the same extent as required for U.S. vessels.

We notify the IMO of a new or modified TSS by submitting a proposal asking that the Maritime Safety Committee of the IMO adopt the new or modified TSS. We take this action not only to fulfill our statutory responsibilities under the PWSA, but also to follow the procedures of the IMO General Provisions for Ships' Routeing (IMO Assembly Resolution A.572(14)). When the IMO adopts a TSS, it notifies the international maritime and hydrographic communities through a Marine Safety Committee circular and adds the TSS to its publication, "Ships' Routeing." In this role, the IMO serves as the only international forum on guidelines, criteria, and regulations for ship routing measures.

### *B. TSS History*

The Coast Guard established the TSS in the approaches to Portland, ME, in 1978. On February 10, 2005, the Coast Guard published a notice of study announcing a PARS to Evaluate the Vessel Routing Measures in the Approaches to Portland, ME, and Casco Bay, ME, (70 FR 7067). We completed the PARS in 2006 and concluded that no amendment to the TSS was needed. This TSS, though unchanged since 1978, is not incorporated in the Code of Federal Regulations (CFR). The IMO has adopted this TSS, and it is described in "Ships' Routeing."

We established the TSS in the approach to Boston, MA, in 1973 and amended it in 1983, 2007, and 2009.

On August 9, 2004, Congress enacted the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293). In section 626, Congress directed the Secretary of Homeland Security to cooperate with the National Oceanic and Atmospheric Administration (NOAA) in analyzing potential vessel routing measures for reducing vessel strikes of North Atlantic right whales, and to submit a report on the analysis by February 2006.

On February 18, 2005, the Coast Guard announced a PARS of Potential Vessel Routing Measures To Reduce Vessel Strikes of North Atlantic Right Whales (70 FR 8312). We analyzed potential vessel routing measures and considered adjusting existing vessel routing measures in the northern region of the Atlantic Coast, which included Cape Cod Bay, the area off Race Point at the northern end of Cape Cod, and the Great South Channel. The Coast Guard used the information from the PARS to prepare and submit our report to Congress on May 8, 2006. A copy of our report is contained in the docket for this rulemaking.

The Coast Guard announced the results of the PARS on May 24, 2006 (71 FR 29876). We recommended realigning and amending the location and size of the western portion of the TSS in the approach to Boston, MA. We revised the TSS in 2007, and the new configuration appeared on nautical charts soon thereafter.

On November 19, 2007, the Coast Guard announced a second PARS to Analyze Potential Vessel Routing Measures to Reduce Vessel Strikes of North Atlantic Right Whales While also Minimizing Adverse Effects on Vessel Operations (72 FR 64968). The study area included approaches to Boston, MA, specifically, a northern right whale critical habitat in the area east and south of Cape Cod, MA, and the Great South Channel, including Georges Bank out to the exclusive economic zone boundary. The results of the PARS can be found in docket number USCG–2007–0057. In this second PARS, we recommended establishing a seasonal Area to be Avoided (ATBA) and amending the southeastern portion of the TSS to make it uniform throughout its length. In 2009, we revised the TSS and established the ATBA. The revised TSS and the ATBA appear on nautical charts. However, neither the revised TSS nor the ATBA were added to the CFR. The IMO has adopted the revised TSS and the ATBA, and they are described in "Ships' Routeing."

We established the TSS in the approaches to Narragansett Bay, RI, and Buzzards Bay, MA, in 1973 and amended it in 1983. On December 23, 2003, the Coast Guard published a Notice of PARS for Narragansett Bay, RI and Buzzards Bay, MA (68 FR 246). In the PARS, we recommended not changing the existing TSS. This TSS appears on nautical charts but is not included in the CFR. The IMO has adopted this TSS, and it is described in "Ships Routeing."

On January 18, 2002, the Coast Guard published a Notice of PARS for the Approaches to Cape Fear River, NC (67 FR 2616). We announced the completion of the PARS on April 8, 2004 (69 FR 18476). In the PARS, we recommended establishing a precautionary area and TSS near the approaches to the Cape Fear River. We established the recommended precautionary area and TSS in the approaches to the Cape Fear River, NC, in 2004. The precautionary area and TSS appear on nautical charts but are not incorporated in the CFR. The IMO has adopted this precautionary area and TSS, and it is described in "Ships' Routeing."

We established the TSS in the approaches to Chesapeake Bay, VA, in 1978, revised it in 1991, and incorporated it in the CFR in 1994 (59 FR 21937). On July 26, 2002, the Coast Guard announced a PARS for the approaches to Chesapeake Bay, VA (67 FR 48837). We recommended an amendment to the Eastern Approach TSS. The amended TSS is shown on nautical charts but is not incorporated in the CFR. The IMO adopted this amendment to the TSS, and it is described in "Ships' Routeing."

Each of the TSSs described in this section appears on nautical charts and is described in the United States Coast Pilot published by NOAA. All vessels over 1600 gross registered tons must have nautical charts and a copy of the United States Coast Pilot when operating in the navigable waters of the United States (33 CFR 164.33).

The nautical charts showing these TSSs and the United States Coast Pilot can be viewed on the Internet through the NOAA Office of Coast Survey Web site at: *http://www.nauticalcharts.noaa.gov/mcd/OnLineViewer.html.*

These TSSs have also been adopted by the IMO and are included in the current version of "Ships' Routeing." This publication is available by contacting the IMO at: IMO Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, e-mail: *sales@imo.org.*

*C. Regulatory History*

The Coast Guard did not publish a Notice of Proposed Rulemaking (NPRM) for this rule. Under the Administrative Procedure Act (APA) "good cause" exception at 5 U.S.C. 553(b)(B), an agency may dispense with notice and comment procedures if the agency finds that following these APA requirements would be "impracticable, unnecessary, or contrary to the public interest." The Coast Guard determined that good cause exists for dispensing with notice and comment procedures for this rule because notice and comment is unnecessary.

Notice and comment for this rulemaking is unnecessary because the codification of these TSSs is both insignificant in nature and impact, and inconsequential to the industry and the public. Mariners navigate not by what is in the CFR, but by what appears on nautical charts. This rule merely codifies TSSs as they have appeared on nautical charts and in United States Coast Pilot and IMO Publications, and as they have been used by mariners, for several years.

Additionally, the use of a TSS by a mariner is strictly voluntary and the codification of these TSSs does not create a requirement or impose a burden on either the mariner or the public. Further, the inclusion of these TSSs into the CFR does not impose a new requirement and will not alter the decision of a mariner to use or not use a TSS. These TSSs have appeared on nautical charts and have been used by mariners for several years and there have been no comments, complaints or requests for modification from either mariners or the public.

**IV. Discussion of the Interim Rule**

Through this interim final rule, the Coast Guard codifies the coordinates of the TSSs in the approaches to Portland, ME, in the approaches to Boston, MA, in the approaches to Narragansett Bay, RI, and Buzzards Bay, MA, and in the approaches to the Cape Fear River, NC. Through this interim final rule, we also amend the existing TSS in the approaches to Chesapeake Bay, VA.

The latitude and longitude details of the TSS coordinates are shown in the regulatory text of this interim final rule. We note that reading the coordinates is not sufficiently informative and that the applicable nautical charts should be consulted to fully appreciate the position and configuration of the TSSs. However, these charts are too large a scale to reproduce in the **Federal Register**. Therefore, we recommend viewing these TSSs with the NOAA Nautical Chart On-Line Viewer. The Web site for each TSS is listed below.

*A. In the Approaches to Portland, ME*

The existing TSS in the approaches to Portland, ME, (NOAA chart 13292, Portland Harbor and Vicinity) can be viewed by using the NOAA Nautical Chart On-Line Viewer at address: *http://www.charts.noaa.gov/OnLineViewer/13292.shtml.*

*B. In the Approaches to Boston, MA*

The existing TSS in the approaches to Boston, MA and the ATBA (NOAA chart 13267, Massachusetts Bay) can be viewed by using the NOAA Nautical Chart On-Line Viewer at address: *http://www.charts.noaa.gov/OnLineViewer/13267.shtml.*

*C. In the Approaches to Narragansett Bay, RI and Buzzards Bay, MA*

The existing TSS in the approaches to Boston, MA, (NOAA chart 13218, Martha's Vineyard to Block Island) can be viewed by using the NOAA Nautical Chart On-Line Viewer at address: *http://www.charts.noaa.gov/OnLineViewer/13218.shtml.*

*D. In the Approaches to Chesapeake Bay, VA*

The existing TSS in the approaches to Chesapeake Bay, VA, (NOAA chart 12221, Chesapeake Bay Entrance) can be viewed by using the NOAA Nautical Chart On-Line Viewer at address: *http://www.charts.noaa.gov/OnLineViewer/12221.shtml.*

*E. In the Approaches to Cape Fear River, NC*

The existing TSS in the approaches to Cape Fear River, NC and the Precautionary Area (NOAA chart 11536, Approaches to Cape Fear River) can be viewed by using the NOAA Nautical Chart On-Line Viewer at address: *http://www.charts.noaa.gov/OnLineViewer/11536.shtml.*

## V. Regulatory Analyses

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

*A. Regulatory Planning and Review*

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

As previously discussed, the TSSs codified in this interim final rule were adopted by IMO and are reflected on current nautical charts and in nautical publications. We anticipate no increased costs for vessels traveling within the aforementioned areas.

These internationally recognized traffic separation schemes provide better routing order and predictability, increase maritime safety, and reduce the potential for collisions, groundings, and hazardous cargo spills.

By codifying these existing TSSs, we record the latitudes and longitudes of the TSSs' coordinates in the CFR tables and make it easier for the public to reference our regulations when recommending modifications or other operational considerations. Including them in the CFR merely memorializes the position and configuration of the TSSs and does not impact mariner actions or expectations.

*B. Small Entities*

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

As this rule serves to codify in the CFR TSSs that have already been implemented, we estimate that there will be no increased costs due to this rule.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this interim final rule does 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 will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If you believe this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Detweiler, Office of Navigation Systems, telephone 202–372–1566. The U.S. Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the U.S. Coast Guard.

*D. Collection of Information*

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

*E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it has federalism implications. Conflict preemption principles apply to PWSA Title I, and the TSSs in this rule are issued under the authority of PWSA Title I. These TSSs are specifically intended to have preemptive impact over State law covering the same subject matter in the same geographic area.

Title I of PWSA (33 U.S.C. 1221 *et seq.*) authorizes the Secretary to issue regulations to designate TSSs to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. In enacting the PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSSs that are the subject of this rule, we have sought input from the public and consulted with the affected State and Federal pilots' associations, vessel operators, users, environmental advocacy groups, and all affected stakeholders.

Presently, there are no State laws or regulations in the States affected by this rule concerning the same subjects as those contained in this rule. We understand that the affected States do not contemplate issuing any such regulations.

Foreign vessel owners and operators usually become aware of TSSs when the TSSs are added to the United States Coast Pilot and the nautical charts that are required on each ship operating in U.S. waters by 33 CFR 164.33. Foreign vessel owners and operators also become aware of TSSs through their

national IMO delegation and IMO publications.

The individual States of the United States are not represented at the IMO as that is the role of the Federal Government. The U.S. Coast Guard is the principal agency responsible for advancing the interests of the United States at the IMO. In this role, we solicit comments from the stakeholders through public meetings and develop a unified U.S. position prior to attending sessions of the IMO Subcommittee on Safety of Navigation and the Maritime Safety Committee where TSSs are discussed.

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

This rule 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.

*H. 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.

*I. Protection of Children*

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

*J. Indian Tribal Governments*

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

*K. Energy Effects*

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

*L. Technical Standards*

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

This rule does not use technical standards, nor is the Coast Guard aware of the existence of any standards that address these TSSs. Therefore, we did not consider the use of voluntary consensus standards.

*M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(i) of the Instruction. This rule involves navigational aids, which include TSSs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 167**

Harbors, Incorporation by reference, Marine safety, Navigation (water), Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 167, subpart B as follows:

## PART 167—[AMENDED]

■ 1. Revise the authority citation for part 167 to read as follows:

**Authority:** 33 U.S.C. 1223; Department of Homeland Security Delegation No. 0170.0.

■ 2. Add § 167.50 to read as follows:

### § 167.50 In the approaches to Portland, ME: General.

The traffic separation scheme in the approaches to Portland, ME, consists of three parts: A precautionary area, an Eastern approach and a Southern approach. The specific areas in the traffic separation scheme in the approaches to Portland, ME, are described in §§ 167.51 through 167.53.

■ 3. Add § 167.51 to read as follows:

### § 167.51 In the approaches to Portland, ME: Precautionary area.

A precautionary area is established with a radius of 5.45 miles centered upon geographical position 43°31.60′ N, 70°05.53′ W, the areas within separation zones and traffic lanes excluded.

■ 4. Add § 167.52 to read as follows:

### § 167.52 In the approaches to Portland, ME: Eastern approach.

(a) A separation zone 1 mile wide is established and is centered upon the following geographical positions:

| Latitude | Longitude |
|---|---|
| 43°30.18′ N | 069°59.17′ W. |
| 43°24.28′ N | 069°32.70′ W. |

(b) A traffic lane ½ miles wide is established on each side of the separation zone.

■ 5. Add § 167.53 to read as follows:

### § 167.53 In the approaches to Portland, ME: Southern approach.

(a) A separation zone 1 mile wide is established and is centered upon the following geographical positions:

| Latitude | Longitude |
|---|---|
| 43°27.00′ N | 70°03.48′ W. |
| 43°07.82′ N | 69°54.95′ W. |

(b) A traffic lane 1½ mile wide is established on each side of the separation zone.

■ 6. Add § 167.75 to read as follows:

**§ 167.75 In the approach to Boston, MA: General.**

The traffic separation scheme (TSS) in the approach to Boston, MA, consists of three parts: Two precautionary areas and a TSS. The specific areas in the TSS in the approach to Boston, MA, are described in §§ 167.76 and 167.77. The geographic coordinates in §§ 167.76 and 167.77 are defined using North American Datum 1983 (NAD 83), which is equivalent to WGS 1984 datum.

■ 7. Add § 167.76 to read as follows:

**§ 167.76 In the approach to Boston, MA: Precautionary areas.**

(a) A precautionary area is established with a radius of 6.17 nautical miles centered upon geographical position 42°22.71′ N, 70°46.97′ W.

(b) (1) A precautionary area is established and is bounded to the east by a circle of radius 15.5 miles, centered upon geographical position 40°35.01′ N, 68°59.96′ W, intersected by the traffic separation schemes in the approach to Boston, MA, and Eastern approach, off Nantucket (part II of the TSS off New York) at the following geographical positions:

| Latitude | Longitude |
|---|---|
| 40°50.47′ N | 68°58.67′ W. |
| 40°23.75′ N | 69°13.95′ W. |

(2) The precautionary area is bounded to the west by a line connecting the two TSSs between the following geographical positions:

| Latitude | Longitude |
|---|---|
| 40°48.03′ N | 69°02.95′ W. |
| 40°36.76′ N | 69°15.13′ W. |

■ 8. Add § 167.77 to read as follows:

**§ 167.77 In the approach to Boston, MA: Traffic Separation Scheme.**

(a) A separation zone 1 mile wide is established and is centered upon the following geographic positions:

| Latitude | Longitude |
|---|---|
| 42°20.73′ N | 70°39.06′ W. |
| 42°18.28′ N | 70°01.14′ W. |
| 40°49.25′ N | 69°00.81′ W. |

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 40°50.47′ N | 68°58.67′ W. |
| 42°20.17′ N | 69°59.40′ W. |
| 42°22.71′ N | 70°38.62′ W. |

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 42°18.82′ N | 70°40.49′ W. |
| 42°16.39′ N | 70°02.88′ W. |
| 40°48.03′ N | 69°02.95′ W. |

■ 9. Add § 167.100 to read as follows:

**§ 167.100 In the approaches to Narragansett Bay, RI, and Buzzards Bay, MA: General.**

The traffic separation scheme in the approaches to Narragansett Bay, RI, and Buzzards Bay, MA, consists of four parts: Two precautionary areas and two approaches—a Narragansett approach and a Buzzards Bay approach. The specific areas in the approaches to Narragansett Bay, RI, and Buzzards Bay, MA, are described in §§ 167.101 through 167.103. The geographic coordinates in §§ 167.101 through 167.103 are defined using North American Datum 1983 (NAD 83), which is equivalent to WGS 1984 datum.

■ 10. Add § 167.101 to read as follows:

**§ 167.101 In the approaches to Narragansett Bay, RI, and Buzzards Bay, MA: Precautionary areas.**

(a) A precautionary area is established with a radius of 5.4 miles and is centered upon geographical position 41°06.00′ N, 71°23.30′ W.

(b) A precautionary area is established with a radius of 3.55 miles and is centered upon geographical position 41°25.60′ N, 71°23.30′ W.

■ 11. Add § 167.102 to read as follows:

**§ 167.102 In the approaches to Narragansett Bay, RI, and Buzzards Bay, MA: Narragansett Bay approach.**

(a) A separation zone 2 miles wide is established and is centered upon the following geographical positions:

| Latitude | Longitude |
|---|---|
| 41°22.70′ N | 71°23.30′ W. |
| 41°11.10′ N | 71°23.30′ W. |

(b) A traffic lane 1 mile wide is established on each side of the separation zone.

■ 12. Add § 167.103 to read as follows:

**§ 167.103 In the approaches to Narragansett Bay, RI, and Buzzards Bay, MA: Buzzards Bay approach.**

(a) A separation zone 1 mile wide is established and is centered upon the following geographical positions:

| Latitude | Longitude |
|---|---|
| 41°10.20′ N | 71°19.10′ W. |
| 41°21.80′ N | 71°07.10′ W. |

(b) A traffic lane 1 mile wide is established on each side of the separation zone.

**Note to § 167.103:** A restricted area, 2 miles wide, extending from the southern limit of the Narragansett Bay approach traffic separation zone to latitude 41°24.70' N, has been established. The restricted area will only be closed to ship traffic by the Naval Underwater System Center during periods of daylight and optimum weather conditions for torpedo range usage. The closing of the restricted area will be indicated by the activation of a white strobe light mounted on Brenton Reef Light and controlled by a naval ship supporting the torpedo range activities. There would be no ship restrictions expected during inclement weather or when the torpedo range is not in use.

**§ 167.200 [Amended]**

■ 13. In § 167.200(a), remove the text "13.5 meters (45 feet)" wherever it appears, and add, in its place, the text "12.8 meters (42 feet).

**§ 167.201 [Amended]**

■ 14. In § 167.201, remove the text "36°56.14′ N" and add, in its place, the text "36°56.13′ N"; and remove the text "75°57.43′ W" and add, in its place, the text "75°57.45′ W".

■ 15. Revise § 167.202 to read as follows:

**§ 167.202 In the approaches to Chesapeake Bay: Eastern approach.**

(a) A separation line is established connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°57.50′ N | 75°48.21′ W. |
| 36°56.40′ N | 75°52.40′ W. |
| 36°56.40′ N | 75°54.95′ W. |

(b) A traffic lane for westbound traffic is established between the separation line and a line connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°57.94′ N | 75°48.41′ W. |
| 36°56.90′ N | 75°52.40′ W. |
| 36°56.80′ N | 75°55.14′ W. |

(c) A traffic lane for eastbound traffic is established between the separation line and a line connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°57.04′ N | 75°48.01′ W. |

| Latitude | Longitude |
|---|---|
| 36°55.88′ N | 75°52.40′ W. |
| 36°55.88′ N | 75°54.95′ W. |

■ 16. Revise § 167.203 to read as follows:

**§ 167.203 In the approaches to Chesapeake Bay: Southern approach.**

(a) A separation line connects the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°50.33′ N | 75°46.29′ W. |
| 36°52.90′ N | 75°51.52′ W. |
| 36°55.96′ N | 75°54.97′ W. |

(b) A separation line connects the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°55.11′ N | 75°55.23′ W. |
| 36°52.35′ N | 75°52.12′ W. |
| 36°49.70′ N | 75°46.80′ W. |

(c) A separation line connects the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°49.52′ N | 75°46.94′ W. |
| 36°52.18′ N | 75°52.29′ W. |
| 36°54.97′ N | 75°55.43′ W. |

(d) A separation line connects the following geographical positions:

| Latitude | Longitude |
|---|---|
| 36°54.44′ N | 75°56.09′ W. |
| 36°51.59′ N | 75°52.92′ W. |
| 36°48.87′ N | 75°47.42′ W. |

(e) A traffic lane for inbound traffic is established between the separation lines described in paragraphs (a) and (b) of this section.

(f) A traffic lane for outbound traffic is established between the separation lines described in paragraphs (c) and (d) of this section.

(g) A deep-water route is established between the separation lines described in paragraphs (b) and (c) of this section. The following vessels should use the deep-water route established in paragraph (g) of this section when bound for Chesapeake Bay from sea or to sea from Chesapeake Bay:

(1) Deep draft vessels (drafts greater than 13.5 meters/45 feet in fresh water); and

(2) Naval aircraft carriers.

(h) It is recommended that a vessel using the deep-water route established in paragraph (g) of this section—

(1) Announce its intention on VHF–FM Channel 16 as it approaches Chesapeake Bay Southern Approach Lighted Whistle Buoy CB on the south end, or Chesapeake Bay Junction Lighted Buoy CBJ on the north end of the route;

(2) Avoid, as far as practicable, overtaking other vessels operating in the deep-water route; and

(3) Keep as near to the outer limit of the route which lies on the vessel's starboard side as is safe and practicable.

(i) Vessels other than those listed in paragraph (d) of this section should not use the deep-water route.

■ 17. Add § 167.250 to read as follows:

**§ 167.250 In the approaches to the Cape Fear River: General.**

The traffic separation scheme (TSS) in the approaches to the Cape Fear River consists of two parts: A precautionary area and a TSS. The specific areas in the approaches to Narragansett Bay, RI, and Buzzards Bay, MA, are described in §§ 167.251 and 167.252. The geographic coordinates in §§ 167.251 and 167.252 are defined using North American Datum 1983 (NAD 83), which is equivalent to WGS 1984 datum.

■ 18. Add § 167.251 to read as follows:

**§ 167.251 In the approaches to the Cape Fear River: Precautionary area.**

A precautionary area is established bounded by a line connecting the following geographical positions: from 33°47.65′ N, 78°04.78′ W; to 33°48.50′ N, 78°04.27′ W; to 33°49.53′ N, 78°03.10′ W; to 33°48.00′ N, 78°01.00′ W; to 33°41.00′ N, 78°01.00′ W; to 33°41.00′ N, 78°04.00′ W; to 33°44.28′ N, 78°03.02′ W; then by an arc of 2 nautical miles radius, centered at 33°46.03′ N, 78°05.41′ W; then to the point of origin at 33°47.65′ N, 78°04.78′ W.

■ 19. Add § 167.252 to read as follows:

**§ 167.252 In the approaches to the Cape Fear River: Traffic Separation Scheme.**

(a) A traffic separation zone is established bounded by a line connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 33°44.94′ N | 78°04.81′ W. |
| 33°32.75′ N | 78°09.66′ W. |
| 33°34.50′ N | 78°14.70′ W. |
| 33°45.11′ N | 78°04.98′ W. |

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographic positions:

| Latitude | Longitude |
|---|---|
| 33°32.75′ N | 78°05.99′ W. |
| 33°44.38′ N | 78°03.77′ W. |

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographic positions:

| Latitude | Longitude |
|---|---|
| 33°36.22′ N | 78°18.00′ W. |
| 33°46.03′ N | 78°05.41′ W. |

**Note to § 167.252:** A pilot boarding area is located inside the precautionary area. Due to heavy ship traffic, mariners are advised not to anchor or linger in the precautionary area except to pick up or disembark a pilot.

Dated: December 7, 2010.

**P.F. Cook,**

*Captain, U.S. Coast Guard, Acting Director of Marine Transportation Systems Management.*

[FR Doc. 2010–31113 Filed 12–10–10; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

[Docket No. 101006495–0498–01]

RIN 0648–BA31

## Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS issues an interim final rule to implement Steller sea lion protection measures to insure that the Bering Sea and Aleutian Islands management area (BSAI) groundfish fisheries off Alaska are not likely to jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or adversely modify its designated critical habitat. These management measures will disperse fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts in the BSAI. The intended effect of this interim final rule is to

protect the endangered western DPS of Steller sea lions, as required under the Endangered Species Act, and to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Effective January 1, 2011. Comments must be received by January 12, 2011.

**ADDRESSES:** Send comment to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by RIN 0648–BA31, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action, the 2010 Biological Opinion on the Authorization of Groundfish Fisheries under the Fishery Management Plans for the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska, the 2008 Revised Recovery Plan for the Steller Sea Lion, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and the 2006 Alaska Groundfish Fisheries Biological Assessment are available from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802 or from the Alaska Region NMFS Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this interim final rule may be submitted to NMFS and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species. As the action agency, NMFS is responsible to insure that the Federal action of authorizing the Alaska groundfish fisheries is not likely to jeopardize the continued existence or modify or destroy designated critical habitat for ESA-listed species. The action implemented by this interim final rule is the result of an ESA section 7 formal consultation biological opinion, which requires the implementation of a reasonable and prudent alternative to the current Alaska groundfish fisheries management.

## Background

The Endangered Species Act of 1973 (ESA) requires Federal agencies to "insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined * * * to be critical." 16 U.S.C. sec. 1536(a)(2). This provision further requires Federal agencies to consult with the Secretary of Commerce on Federal actions that might affect species under the Secretary's jurisdiction that are listed as endangered or threatened ("listed species"). The annual authorization of the Alaska groundfish fisheries under the Magnuson-Stevens Act is an "action authorized, funded, or carried out" by a Federal agency that could affect listed species under the jurisdiction of the Secretary of Commerce, and therefore requires consultation.

In October 2005, the Council recommended that NMFS reinitiate an FMP-level formal section 7 consultation on the effects of the Federal groundfish fisheries on ESA-listed species under U.S. Department of Commerce jurisdiction. This jurisdiction has been formally delegated to NMFS. On April 19, 2006, the Protected Resources Division of NMFS Alaska Region (PRD), as the consulting agency, received a written request from the NMFS Alaska Region Sustainable Fisheries Division (SFD), as the action agency, to re-initiate section 7 consultation on the Federal groundfish fisheries in waters 3 miles to 200 miles off Alaska, as well as several groundfish fisheries that are conducted in waters of the State of Alaska (collectively, the "Alaska groundfish fisheries"), to evaluate the effects of current Federal fisheries management on listed species because of information gained and management actions taken since previous consultations. That request was accompanied by a biological assessment that reviewed the likely effects of the Alaska groundfish fisheries on all twelve of the listed marine species found in waters off Alaska and under NMFS's jurisdiction (*see* **ADDRESSES**). In June 2006, PRD concluded that the information provided by SFD's biological assessment showed that the Steller sea lion (both the western and the eastern DPSs), the North Pacific humpback whale, and the North Pacific sperm whale were likely to be adversely affected by the Alaska groundfish fisheries. This determination required the initiation of formal section 7 consultation under the ESA on these species and Steller sea lion designated critical habitat, resulting in the issuance of a biological opinion. Subsequent to reinitiating consultation, a fin whale was taken incidentally in the BSAI pollock trawl fishery. Therefore, fin whales also were included in this consultation. Critical habitat is not designated for humpback, fin, and sperm whales.

Under the ESA and its implementing regulations, if the consulting agency (here, PRD) finds that the proposed action is likely to either jeopardize the continued existence of the species or result in the adverse modification of critical habitat, the consulting agency is required to identify a reasonable and prudent alternative (RPA), if any, that would not violate the ESA. While an action agency (here, SFD) has limited

discretion to adopt different measures than those contained in the RPA, it does so at its peril and must still demonstrate why the alternative measures comply with the ESA's mandate to avoid the likelihood of jeopardizing the continued existence of the species or adversely modifying critical habitat.

As explained in detail below, NMFS issued a biological opinion (2010 BiOp, *see* **ADDRESSES**) that concluded that the proposed fishery management action was not likely to jeopardize the continued existence or adversely modify the critical habitat of North Pacific humpback whales, North Pacific sperm whales, fin whales, or the eastern distinct population segment of Steller sea lions, but was likely to jeopardize the continued existence and adversely modify the critical habitat of the western DPS of Steller sea lions.

Section 3.5.3 of the FMP for Groundfish of the BSAI, approved by the Secretary of Commerce under the Magnuson-Stevens Act, specifically authorizes implementation by regulation of special fishery management measures to protect marine mammals, without requiring amendment of the fishery management plan itself (*see* **ADDRESSES**). Therefore, NMFS has chosen to implement fishery management measures responding to the biological opinion issued under the ESA via regulations promulgated under the Magnuson-Stevens Act.

In order to provide as transparent a process as possible, on August 3, 2010, NMFS released a draft of the 2010 BiOp, including the RPA, as well as analyses of alternatives to the proposed action (*see* **ADDRESSES**). These analyses were a draft environmental assessment (EA) prepared pursuant to the National Environmental Policy Act (NEPA), reviewing the potential impact on the human environment of the proposed action and alternatives; and a Regulatory Impact Review (RIR) pursuant to Executive Order 12866, which analyzes the cost and benefits of the proposed action and alternatives. The draft 2010 BiOp and draft EA/RIR were presented to the Council at a special meeting in August 2010. The Council and the public were provided a comment period to submit suggested changes to the RPA. PRD reviewed the comments from the Council and the public and made revisions to the RPA consistent with principles and objectives in the draft biological opinion. The final 2010 BiOp was signed on November 24, 2010. Both the final 2010 BiOp and EA/RIR are available to the public (*see* **ADDRESSES**). This interim final rule adopts the RPA in the final 2010 BiOp. Therefore, NMFS takes this action under the Magnuson-Stevens Act to comply with its responsibilities under the ESA to insure that its action, *i.e.*, the authorization of the Alaska groundfish fisheries, is not likely to jeopardize the continued existence of the western DPS of Steller sea lions or result in the destruction or adverse modification of its designated critical habitat.

In this rulemaking, NMFS adopted the 2010 BiOp's RPA because it was modified based on public comment on the draft RPA to reduce impacts on the fisheries while insuring that the groundfish fisheries are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat. While NMFS considered public comments that would have allowed greater fishing opportunities, including the Council's proposed alternative, none of those measures as a whole would have met the performance standards of the RPA to insure the groundfish fisheries are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat.

Because the 2010 BiOp, including the RPA, was not signed until November 24, 2010, and the Alaska groundfish fisheries open on January 1, 2011, it is necessary for these regulations to be issued on an expedited basis, without the usual notice and opportunity for public comment before the regulations go into effect. *See* the Classification section of this rule for further information on waiver of prior notice and comment.

**Findings of the 2010 Biological Opinion**

The jeopardy and adverse modification finding for the western DPS of Steller sea lions is based on the continued decline of Steller sea lions in the Aleutian Islands subarea and the potential effects of the harvest of Atka mackerel and Pacific cod in this subarea. Over the last eight years, the numbers of sea lions in the western most district of the Aleutian Islands subarea (Area 543) have declined by approximately 45 percent. Because of the current population decline in Area 543, as well as the slow population decline observed in the central and eastern districts of the Aleutian Islands subarea (Areas 542 and 541, respectively), the recovery of the western DPS of Steller sea lions is not meeting the criteria in the 2008 Recovery Plan (*see* **ADDRESSES**). If population trends in the Aleutian Islands subarea continue at current rates, Steller sea lions may be extirpated from this portion of their range.

Atka mackerel and Pacific cod are principal prey species of Steller sea lions. The harvest of these species may impact the foraging success of Steller sea lions. Atka mackerel and Pacific cod harvest have been managed in the Aleutian Islands under the temporal and spatial dispersion requirements implemented by the Steller sea lion protection measures. These protection measures were implemented in 2002 by emergency interim rule (67 FR 956, January 8, 2002; amended 67 FR 21600, May 1, 2002; corrected 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and 67 FR 64315, October 18, 2002; and extended 67 FR 34860, May 16, 2002) and by final rule in 2003 (68 FR 204, January 2, 2003; corrected 68 FR 24615, May 8, 2003). Detailed analysis of the environmental baseline; Steller sea lions population trends, foraging behavior, and biology; and effects of the groundfish fisheries on Steller sea lions is presented in the 2010 BiOp (*see* **ADDRESSES**).

*Reasonable and Prudent Alternative*

Based on the continued population decline of Steller sea lions in portions of the Aleutian Islands subarea and the potential effects of groundfish harvests on Steller sea lions and their critical habitat, an RPA to the current management of the BSAI groundfish fisheries must be implemented to insure the Alaska groundfish fisheries are not likely to jeopardize the continued existence of the western DPS of Steller sea lions and adversely modify its designated critical habitat. These protection measures are necessary to comply with section 7(a)(2) of the ESA. Details on the specific protection measures in the RPA and their effects on Steller sea lions and their critical habitat are in chapter 8 of the 2010 BiOp (*see* **ADDRESSES**).

The RPA was structured to mitigate effects of the fishery in locations where Steller sea lion abundance continues to decline (Areas 543, 542, and 541) and where available information indicates that reproduction may be reduced to a level that cannot support population growth. The 2010 BiOp determined that the weight of evidence indicates that fisheries for Steller sea lion prey may be appreciably reducing the reproduction and thus numbers of Steller sea lions and adversely modifying the conservation value of their critical habitat in Areas 543, 542, and 541 by removing large quantities of prey species important to Steller sea lions for basic nutrition and reproductive capacity. Competition with fisheries for prey is likely one component of an intricate suite of natural and

anthropogenic factors affecting Steller sea lion numbers and reproduction. While natural factors may be contributing, NMFS must insure that actions authorized by NMFS are not likely to appreciably reduce the likelihood of survival and recovery of the western DPS of Steller sea lions.

The RPA was developed based on performance standards that address the effects of the groundfish fisheries and the population status and foraging behavior of Steller sea lions in the Aleutian Islands subarea. The details of these standards are in the 2010 BiOp (*see* **ADDRESSES**). One of the performance standards requires that the protection measures be commensurate with the rate of Steller sea lion population declines, with more stringent measures in those locations with greater population declines. The RPA meets this standard by applying more fisheries restrictions in Area 543 where Steller sea lions have the highest population decline and applying fewer fisheries restrictions in Areas 542 and 541, where Steller sea lion population decline is less. The implementation of the RPA is expected to eliminate local competition between Steller sea lions and the Atka mackerel and Pacific cod fisheries in Area 543. This is intended to improve foraging success and prey availability for juvenile and adult Steller sea lions, which is expected to lead to higher survival and natality rates. The RPA also reduces the competitive overlap between Steller sea lions and fisheries for Atka mackerel and Pacific cod in Areas 542 and 541. This is intended to improve foraging success and prey availability for Steller sea lions, particularly adult females with dependent young in winter, which is expected to lead to higher natality rates and survival.

In addition to maintaining the status quo, NOAA considered three different alternatives for analysis under NEPA and under Executive Order 12866 to inform its decisions as to how best to manage the fishery in compliance with the ESA (*see* **ADDRESSES** for the EA/RIR). The status quo was rejected because it would not avoid jeopardy or adverse modification. One alternative was an alternative that complied with ESA's statutory mandates regarding jeopardy and adverse modification but had a greater impact on the fishing industry than the RPA. The second alternative was the draft RPA in the draft 2010 BiOp released for public review in August 2010. The second alternative was not implemented as NMFS reviewed the Council and public comments regarding the draft RPA and further refined the RPA to provide additional opportunity for fishing while meeting the RPA performance standards. The third and preferred alternative is the RPA from the final 2010 BiOp. While the RPA may result in substantial impacts on the fishing industry, NMFS determined that the RPA is the least costly alternative among the options that is likely to avoid jeopardy and adverse modification.

*Protection Measures Requiring Regulatory Amendments*

The following are the revisions to the Steller sea lion protection measures implemented by this interim final rule.

**Application of the Revised Protection Measures**

The protection measures that are implemented by this rule, and which are further described below, apply to vessels that catch groundfish that is required to be deducted from the Federal total allowable catch (TAC) under § 679.20 and that are required to be named on a Federal Fisheries Permit issued under § 679.4(b) in the BSAI reporting areas, including the State of Alaska (State) waters within those reporting areas. Federally permitted vessels that participate in the State Pacific cod fishery authorized by 5 AAC 28.647, Aleutian Islands District Pacific Cod Management Plan (AI State-managed Pacific cod fishery) and that deduct this Pacific cod from the State Pacific cod guideline harvest level and not the Federal TAC, would not be subject to the Pacific cod retention and directed fishing restrictions specified in this interim final rule. The State has adopted the same Steller sea lion protection measures for the AI State-managed Pacific cod fishery as NMFS implemented for the Federal groundfish fisheries in 2003 (68 FR 204, January 2, 2003). The 2010 BiOp included the cumulative impact of the AI State-managed Pacific cod fishery. Based on the findings in the 2010 BiOp, which considered the combination of effects of the AI State-managed Pacific cod fishery and the Federal groundfish fisheries, NMFS has determined that the modifications made by this interim final rule are sufficient to insure that NMFS's authorization of Federal fisheries is not likely to jeopardize the continued existence of the western DPS of Steller sea lions or destroy or adversely modify its designated critical habitat.

**Area 543 Atka Mackerel and Pacific Cod Fishing Prohibitions**

The RPA requires a protection measure prohibiting the retention of Pacific cod and Atka mackerel in Area 543. Because Area 543 has experienced the most severe decline in Steller sea lion abundance and because Atka mackerel and Pacific cod are important prey items, it is necessary to reduce fishery removals of these prey species. Pacific cod and Atka mackerel may not be targeted or retained when incidentally caught in other groundfish fisheries. If only a directed fishing closure were used to limit Atka mackerel and Pacific cod harvest, these species could be retained up to the maximum retainable amount (MRA) of the basis species specified in Table 11 to 50 CFR part 679. For example, if retention were not prohibited, a vessel targeting Pacific ocean perch could retain Atka mackerel and Pacific cod in amounts up to 20 percent of the amount of Pacific ocean perch retained.

As described in the 2010 BiOp, NMFS model results indicate that allowing fishing to occur, even at substantially reduced levels, would inhibit a significant increase in biomass of Atka mackerel and Pacific cod. NMFS believes a significant increase in biomass of Atka mackerel and Pacific cod will contribute to both the continued survival and recovery of Steller sea lions in Area 543. The biomass of these prey species is expected to increase if all retention of Atka mackerel and Pacific cod is prohibited. Given the potential for Atka mackerel and Pacific cod fisheries to compete with Steller sea lions in a manner that limits their reproduction or survival, as evidenced in population responses observed to date in Area 543, NMFS has determined that it must eliminate this potential competition to comply with the ESA.

**Atka Mackerel Harvest Limit Area (HLA) Fishery**

Under the 2003 Steller sea lion protection measures, the harvest of Atka mackerel inside Steller sea lion critical habitat in Area 543 and the western portion of Area 542 was dispersed by controlling the number of vessels that could harvest Atka mackerel inside the HLA. The HLA included designated critical habitat and waters 0 nm to 20 nm around other locations identified as important to Steller sea lions (Steller sea lion sites). A lottery system assigned vessels to platoons that were allowed to fish inside the HLA in specific locations and at specific times. The details of the HLA fishery are in the 2003 final rule for the Steller sea lion protection measures (68 FR 204, January 2, 2003). Because the RPA would prohibit all retention of Atka mackerel in Area 543 and nearly all directed fishing for Atka mackerel in waters 0 nm to 20 nm around Steller sea lion sites in Area 542,

the platoon management of Atka mackerel harvest inside the HLA is no longer needed.

**Kanaga Island/Ship Rock Groundfish Closure**

Recent Steller sea lion count information indicates that this site is now functioning as a rookery. The rookeries listed in Table 12 to 50 CFR part 679 are surrounded by groundfish fishery closures that extend 0 nm to 3 nm from the site. The RPA requires the Kanaga Island/Ship Rock rookery to be treated the same as other rookeries. Therefore, this action includes a protection measure to close directed fishing for groundfish in waters 0 nm to 3 nm of this site. This closure is necessary to protect animals using this location from potential disturbance by fishing vessels and to protect near shore prey resources. Very little groundfish catch has historically occurred in waters 0 nm to 3 nm from this site. According to the 2010 BiOp, this site is important to the population of the western DPS of Steller sea lions because it is one of the few locations in the Aleutian Islands where Steller sea lion reproduction is occurring.

**Pacific Cod Nontrawl Fisheries Winter Closure in Areas 542 and 541**

The RPA includes a closure of the Pacific cod hook-and-line, pot, and jig gear (nontrawl) fisheries in Areas 542 and 541 from November 1, 1200 hours, Alaska local time (A.l.t.), to December 31, 2400 hours, A.l.t. This closure of nontrawl fisheries is consistent with the trawl fishery closure during this time period. This closure allows for two months in the winter when Steller sea lions would not compete with vessels for Pacific cod prey. This closure is necessary to prevent expansion of fishing into time periods not previously fished as other time periods and areas historically fished are restricted under these protection measures. This measure is intended to protect prey availability in the winter when Steller sea lion energetic needs are high and when Pacific cod compose a larger proportion of their diet relative to the summer.

**Pacific Cod Nontrawl Fisheries Closures in Area 542**

The RPA includes two revisions to Area 542 protection measures for the nontrawl Pacific cod fisheries. The first revision closes waters 0 nm to 6 nm of Steller sea lion sites in Area 542 to nontrawl vessels directed fishing for Pacific cod year round. Telemetry data show the relative importance of different portions of critical habitat for foraging Steller sea lions. Steller sea lion at-sea locations from satellite-tagged animals summarized by 2 nm areas show high use by adult female Steller sea lions of waters from 0 nm to 6 nm, especially in summer, and higher use in this area by juveniles relative to other areas within critical habitat in both summer and winter.

Because of the need for extensive shallow-water locations and the relatively narrow continental shelf throughout the Aleutian Islands subarea, hook-and-line gear vessels generally fish for Pacific cod in the Aleutian Islands within 10 nm of Steller sea lion sites (EA/RIR, *see* **ADDRESSES**). The closure of waters from 0 nm to 6 nm provides protection to Steller sea lions while providing opportunity for fishing by the hook-and-line vessels. Prohibiting pot and jig gear vessels in this closed area allows for consistent management of all nontrawl gear types and further reduces potential competition for Pacific cod prey in critical habitat.

The second revision prohibits vessels 60 feet (18.3 m) or greater in length overall (LOA) using nontrawl gear from directed fishing for Pacific cod in waters 6 nm to 20 nm from Steller sea lion sites in Area 542 from January 1, 0001 hours, to March 1, 1200 hours, A.l.t. This revision does not apply to nontrawl vessels less than 60 feet (18.3 m) LOA because these vessels account for approximately two percent of historic Pacific cod Area 542 catch, a small proportion of the overall Pacific cod catch. NMFS determined that this small amount of catch would not be detrimental to the western DPS of Steller sea lions. This revised protection measure benefits Steller sea lion prey resources in the winter, an important time to protect prey resources, and provides the fishing industry with access to higher value fish in the later portion of the A season (March 1 to June 10).

**Pacific Cod Trawl Vessel Closures in Area 542**

The RPA includes revised protection measures for the trawl gear Pacific cod fisheries in Area 542. This interim final rule closes waters 0 nm to 20 nm from Steller sea lion sites to directed fishing for Pacific cod with trawl gear year round in most of Area 542. However, for Steller sea lion sites between 178° W longitude and 177° W longitude, this rule applies the year round closure only to waters from 0 nm to 10 nm. Waters that are 10 nm to 20 nm from Steller sea lion sites and that occur in this one degree longitude area are closed to directed fishing for Pacific cod with trawl gear in the B season (June 10, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t.), but are open during the A season.

The trawl fishery in Area 542 typically occurs in the A season when Pacific cod are aggregated, which coincides with the time of year in which Steller sea lion energetic needs are high. The 10 nm to 20 nm zone of critical habitat would be closed to trawl gear in the B season to prevent the trawl fishery from expanding into a season they have not traditionally fished in Area 542. Therefore, a year-round closure of 0 nm to 20 nm to trawl gear in most of Area 542 (177° E longitude to 178° W longitude) is intended to conserve the value of critical habitat and prevent an intensification of harvest, especially in the 10 nm to 20 nm zone of critical habitat.

**Atka Mackerel Closures in Area 542**

The RPA includes a closure to directed fishing for Atka mackerel in most of the critical habitat in Area 542. This interim final rule prohibits directed fishing for Atka mackerel in waters 0 nm to 20 nm from Steller sea lion sites in Area 542 located between 177° E longitude and 179° W longitude and between 178° W longitude and 177° W longitude. Directed fishing for Atka mackerel is prohibited in waters 0 nm to 10 nm from Steller sea lion sites located between 178° W longitude and 179° W longitude. These closures would provide protection to most of the critical habitat in Area 542, which is currently open to directed fishing for Atka mackerel, from the potential effects of Atka mackerel fishing while allowing a limited Atka mackerel fishery in a portion of critical habitat where the Steller sea lion population trends show less decline. NMFS determined that providing some fishing opportunities in the one degree longitude area within the 10 nm to 20 nm zone of critical habitat reduces the potential for impacting Atka mackerel occurring on Petrel Bank, the primary remaining productive Atka mackerel fishing grounds outside of critical habitat in Area 542.

**Atka Mackerel Area 542 Critical Habitat Harvest Restrictions**

The RPA includes a limitation on the participation in, and the amount and seasonal apportionment of, the Atka mackerel fishery in critical habitat in Area 542. This interim final rule limits the directed fishery for Atka mackerel in critical habitat between 178° W longitude and 179° W longitude to participants in the Western Alaska Community Development Quota (CDQ) Program or to vessels fishing under the authority of an Amendment 80 cooperative quota permit (72 FR 52668,

September 14, 2007, corrected 73 FR 27768, May 14, 2008). The interim final rule also limits the amount of Atka mackerel catch from critical habitat to 10 percent of an Amendment 80 cooperative's Area 542 Atka mackerel allocation, and to 10 percent of a CDQ group's Area 542 Atka mackerel allocation. This 10 percent limit is seasonally apportioned evenly between the A and B seasons.

Limiting access to 10 nm to 20 nm of critical habitat only to operations with a specific allocation, *i.e.*, operations fishing in harvest cooperatives or operations fishing CDQ, prevents a race for Atka mackerel in the open area of critical habitat and insures that allowable harvests in critical habitat is not exceeded. Vessels fishing under a CDQ allocation or an Amendment 80 cooperative allocation are constrained by their allocations and do not have an incentive to engage in a competitive "race for fish" with other participants. Vessels not participating in the CDQ Program or an Amendment 80 cooperative are not held individually accountable to a specific allocation and could have an incentive to "race for fish" in a manner that could cause a catch limit to be exceeded. In 2011, two Amendment 80 cooperatives will be formed. Each Amendment 80 cooperative may catch up to 10 percent of its Area 542 Atka mackerel allocation between 178° W longitude and 179° W longitude. Similarly, each CDQ group receiving an Area 542 allocation may catch up to 10 percent of its Area 542 Atka mackerel allocation within this specified area. Catch is temporally dispersed under either of these allocative programs.

The 10 percent harvest limit prevents catch that may exceed historical amounts taken from this area of critical habitat (2010 BiOp, *see* **ADDRESSES**). This 10 percent harvest limit also prevents excessive concentration of Atka mackerel catch inside critical habitat but provides the industry some opportunity to catch Atka mackerel in a location in Area 542 other than the Petrel Banks, where Atka mackerel fishing effort is likely to shift with the implementation of closures under this interim final rule. The seasonal apportionment of the critical habitat catch provides temporal dispersion of catch in critical habitat, reducing potential impacts on Steller sea lion prey availability.

**Atka Mackerel Area 542 TAC Limit**

The RPA includes a limit of the total catch of Atka mackerel to the historical amount caught in this area, but that is outside of critical habitat. Based on historical harvests, this interim final rule limits the Area 542 Atka mackerel TAC to no more than 47 percent of the Area 542 acceptable biological catch (ABC). The average annual Atka mackerel catch outside of critical habitat from 2003 through 2009 was 47 percent of the total catch in Area 542 (the lowest and the highest years were eliminated in the calculation). Setting the TAC at 47 percent of the ABC preserves historical access to Atka mackerel amounts that had been taken outside of critical habitat while preventing an increase of that amount of catch that could occur if the harvest displaced from the 10 nm to 20 nm zone of critical habitat west of 178° W longitude was allowed to be taken in the open area of Area 542. This limitation on Atka mackerel catch is less stringent than that which is imposed in Area 543 based on the determination by NMFS that measures should be commensurate with the population trends of Steller sea lions in particular areas.

**Pacific Cod Nontrawl Vessel Closures in Area 541**

The RPA includes a closure to nontrawl directed fishing for Pacific cod in Area 541. This interim final rule closes waters 0 nm to 20 nm from Steller sea lion sites to directed fishing for Pacific cod with nontrawl gear from January 1, 0001 hours, A.l.t., to March 1, 1200 hours, A.l.t., for all Federally permitted vessels in Area 541. After March 1, 1200 hours, A.l.t., nontrawl vessels are prohibited from directed fishing for Pacific cod in waters 0 nm to 10 nm from Steller sea lion sites in Area 541. These closures provide protection to Steller sea lion prey in critical habitat, particularly in the winter, while providing fishing opportunity inside critical habitat in the later portion of the A season and in the B season. This closure provides access to the limited amount of area in Area 541 that can be effectively fished with hook-and-line gear for Pacific cod while preventing fishing in marine critical habitat that is used more frequently by foraging Steller sea lions, based on telemetry data (2010 BiOp, *see* **ADDRESSES**). Prohibiting pot and jig gear vessels in this closed area allows for consistent management of these gear types with hook-and-line gear vessels and avoids incentives to use alternative fishing gear to circumvent Steller sea lion protection measures.

**Pacific Cod Trawl Vessel Closures in Area 541**

The RPA includes a closure of portions of critical habitat to directed fishing by Federally permitted vessels for Pacific cod with trawl gear. This interim final rule prohibits directed fishing for Pacific cod with trawl gear in waters 0 nm to 10 nm from Steller sea lion sites in Area 541 year round. The interim final rule also prohibits directed fishing for Pacific cod with trawl gear within 10 nm to 20 nm from Steller sea lion sites in Area 541 from June 10, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t. These closures protect most of the critical habitat in Area 541 from the potential effects of Pacific cod trawl harvest on Steller sea lion prey availability. Because Steller sea lion population trends are better in Area 541 than Areas 542 and 543, more critical habitat is made available for the Pacific cod fishery in Area 541 compared to Areas 542 and 543. This is consistent with the 2010 BiOp performance standard that protection measures be commensurate with the rate of Steller sea lion population decline.

**Atka Mackerel Closure in the Bering Sea Subarea**

The RPA includes a closure of the Bering Sea subarea to directed fishing for Atka mackerel. This interim final rule closes the Bering Sea subarea to directed fishing for Atka mackerel to allow for a limited harvest of Atka mackerel in areas of commercial abundance consistent with the MRAs established for Atka mackerel relative to other retained groundfish species open to directed fishing (Table 11 to 50 CFR part 679). These areas of commercial abundance generally occur in critical habitat areas of the Bering Sea subarea, where Atka mackerel has been historically caught up to the MRAs. Under the regulations implementing MRA provisions, codified at § 679.20 (e) and (f), closure of the Bering Sea subarea to directed fishing for Atka mackerel is necessary to allow for continued harvest of Atka mackerel in a manner similar to historical practices. Because Steller sea lion population trends are not a concern in the Bering Sea subarea, the continued location, amounts, and methods of harvest of Bering Sea Atka mackerel is not likely to result in population level effects on Steller sea lions.

**Atka Mackerel Seasons in Areas 542 and 541 and in the Bering Sea Subarea**

The RPA includes an extension of the Atka mackerel A and B seasons. This interim final rule extends the A and B seasons by ending the A season and starting the B season on June 10, 1200 hours, A.l.t. This season revision applies to the Bering Sea subarea because the Atka mackerel TAC is established for the combined harvest in

Area 541 and the Bering Sea subarea. Seasonal harvests also apply to the CDQ program so that all harvests of Atka mackerel in the BSAI are temporally dispersed.

The increased season lengths provide for Atka mackerel fishing in the summer, a time period for which data show that Steller sea lions have less dependence on Atka mackerel. Extending the Area 542 and Area 541/Bering Sea Atka mackerel seasons insure Atka mackerel harvest inside and outside critical habitat is temporally dispersed, reducing potential effects on Steller sea lion prey availability and providing additional time for fishing for the Atka mackerel vessels.

**Protection Measures Not Requiring Regulatory Amendments**

The RPA also contains three measures that do not require changes to regulations at 50 CFR part 679. These measures address management of the Atka mackerel catch in Area 543 and the amounts of Pacific cod harvests that, if exceeded, would require reinitiation of ESA formal consultation. These measures are listed below and further explained in the 2010 BiOp (*see* **ADDRESSES**).

1. NMFS must establish a TAC for Atka mackerel in Area 543 sufficient to support the incidental discarded catch that may occur in other targeted groundfish fisheries.

This measure is necessary to provide for the discarded incidental catch of Atka mackerel that may occur in other groundfish fisheries in Area 543. The Area 543 Atka mackerel TAC is established in the annual harvest specification as required by § 679.20. Because retention of Atka mackerel will be prohibited in Area 543, the Atka mackerel TAC should not be set higher than what is needed to support the discarded incidental catch.

2. For Pacific cod in Area 542, NMFS must reinitiate ESA consultation if the nontrawl gear harvest exceeds 1.5 percent of the BSAI Pacific cod ABC or if the trawl harvest exceeds two percent of the BSAI Pacific cod ABC. These percentages are equivalent to the Area 542 maximum annual trawl and nontrawl gear harvest amounts from 2007 through 2009.

3. For Pacific cod in Area 541, NMFS must reinitiate ESA consultation if the nontrawl gear harvest exceeds 1.5 percent of the BSAI Pacific cod ABC or if the trawl harvest exceeds 11.25 percent of the BSAI Pacific cod ABC. These percentages are equivalent to the Area 541 maximum annual trawl and nontrawl harvest amounts from 2007 through 2009.

The RPA allows Pacific cod fishery removals in Area 542 and 541 that do not exceed recent historical amounts. With the closure of Area 543 to Pacific cod fishing, Pacific cod harvests in Areas 542 and 541 may increase as vessels shift into areas open to Pacific cod directed fishing. If the amount of Pacific cod fishing increases beyond historical amounts in Areas 542 and 541, NMFS will need to consider the potential effects of this increased harvest on Steller sea lions and determine if any additional protection measures are needed to protect the western DPS of Steller sea lions and its designated critical habitat.

**Regulatory Amendments**

*Definitions*

Two definitions for the HLA Atka mackerel fisheries are removed from § 679.2. Neither of these definitions is needed with the elimination of the HLA and platooning method of managing Atka mackerel harvest in Areas 543 and 542.

*Permits*

Section 679.4(b)(5) is revised to remove references to the HLA Atka mackerel fishery. Permit applicants will no longer need to indicate participation in the HLA fishery as this type of harvest management is eliminated by this interim final rule.

*Prohibitions*

Section 679.7(a) is revised to remove references to the HLA fishery and to add prohibitions for the Atka mackerel and Pacific cod fisheries. Paragraph (a)(19) is revised to remove reference to the HLA fishery and to add the retention prohibition for Atka mackerel and Pacific cod in Area 543. Paragraph (a)(23) is added to prohibit directed fishing for Pacific cod with hook-and-line, pot, and jig gear in Areas 542 and 541 from November 1, 1200 hours, A.l.t., through December 31, 2400 hours, A.l.t. Paragraphs (a)(19) and (a)(23) are specific to vessels harvesting Pacific cod that is required to be deducted from the Federal TAC and that are required to be Federally permitted.

Paragraph (a)(24) is added to prohibit directed fishing for Atka mackerel in the Bering Sea subarea with a vessel required to be Federally permitted. Paragraph (a)(25) is added to prohibit directed fishing for Atka mackerel inside of critical habitat of Gramp Rock and Tag Island unless the participant is fishing under an Amendment 80 cooperative quota permit or under authority of a CDQ allocation. Paragraph (d)(10) is added to require CDQ Atka mackerel fishing to be seasonally apportioned in the same manner as non-CDQ fishing.

*General Limitations*

Section 679.20 is revised to remove provisions for the HLA Atka mackerel fishery under paragraph (a)(8)(iii) and to change provisions for Atka mackerel harvest in the BSAI. Paragraph (a)(8)(ii)(A) is revised to remove the exception for CDQ reserves in establishing seasonal allowances. This will insure CDQ Atka mackerel fishing is seasonally apportioned in the same manner as non-CDQ fishing. Paragraph (a)(8)(ii)(C) is revised to remove the HLA provisions and to add three subparagraphs to describe the harvest limitations for Atka mackerel in Area 542. These limitations are the 10 percent CDQ or Amendment 80 cooperatives Atka mackerel allocation inside critical habitat at Gramp Rock and Tag Island, the seasonal apportionment of the critical habitat harvest, and the setting of TAC at no more than 47 percent of Area 542 ABC. Paragraph (c)(6) also is revised to remove reference to the HLA fishery for purposes of the harvest specifications.

*Closures*

Section 679.22 is revised to describe the Pacific cod and Atka mackerel closures implemented by this rule and to remove references to the HLA Atka mackerel fishery. Paragraph (a)(8)(vi) is revised to remove reference to Table 6 and to establish the closure to directed fishing for Atka mackerel in the entire Bering Sea subarea. Reference to Table 6 for Atka mackerel closures is no longer necessary as the entire Bering Sea subarea is closed to directed fishing by this rule.

The Pacific cod directed fishing restriction during the HLA Atka mackerel fishery under paragraph (a)(8)(iv)(A) is removed because of the elimination of the HLA fishery. Paragraph (a)(8)(iv) is modified to include jig gear and to specify that the closures apply to vessels required to be Federally permitted and that harvest Pacific cod that is deducted from the Federal TAC. This revision is necessary to insure the closure areas apply to all Pacific cod gear types and the vessels to which the closures apply are clearly described.

Paragraph (b)(6) is removed from the regulations as this provision for the Chiniak Gully Research Area has expired.

*Seasons*

Section 679.23 is revised to change the BSAI Atka mackerel seasons and to

insure these seasons apply to the CDQ Atka mackerel fishery. Paragraph (e)(3) is revised to remove reference to non-CDQ fisheries for the Atka mackerel seasons and to extend the A and B seasons as described in the RPA. Paragraph (e)(4) is revised to insure the CDQ Atka mackerel fishery is seasonally apportioned. Paragraphs (e)(4)(iv) and (e)(4)(v) are removed from the regulations as these provisions have expired. These revisions are necessary to insure the Atka mackerel seasons apply to CDQ fishing and to implement these seasons as described in the RPA.

*Observer Program*

Section 679.50(c)(1)(x) is removed because it applied to observer coverage requirements for the HLA Atka mackerel fishery. The HLA fishery is eliminated by this interim final rule so this paragraph is no longer needed.

*Tables*

Tables 5, 6, and 12 to 50 CFR part 679 are revised by this interim final rule. Because this interim final rule prohibits retention of Atka mackerel and Pacific cod in Area 543, the Steller sea lion sites located in Area 543 are removed from Tables 5 and 6. This revision is needed to clarify the application of closure areas around Steller sea lions sites in the Aleutian Islands subarea.

In Table 5 to 50 CFR part 679, columns 7, 8, and 9 and the footnotes are revised to reflect the closures for Pacific cod by gear type in the Aleutian Islands subarea and elimination of the HLA Atka mackerel fishery implemented by this interim final rule. Footnote 11 is removed to eliminate HLA fishery restrictions for the Pacific cod trawl fishery. Footnote 14 is added to describe the closures for Gramp Rock and Tanaga Island/Bumpy Point, which differ west and east of 178°0′ 00″ W longitude. This footnote also describes the area closures for the footnoted sites during two time periods of the year. Footnote 15 describes the vessel size specific closures for the Pacific cod hook-and-line, jig, and pot vessels in Area 542. Even though jig is not identified in the gear columns of the Table 5, the same restrictions apply to jig vessels, which are separately described in footnote 15. Footnote 16 describes the Pacific cod pot, hook-and-line, and jig closures in Area 541, and jig restrictions are also separately referred to in the footnote. Footnote 17 is added to clarify the closure areas around Kiska Island sites that may overlap into Area 543. These revisions are necessary to insure the closures as described by the RPA are implemented.

Table 6 to 50 CFR part 679 is revised to remove Steller sea lion sites that occur in the Area 543 and in the Bering Sea subarea, to remove reference to the HLA Atka mackerel fishery, and to describe the closures implemented by this interim final rule. The Steller sea lion sites for the Area 543 and for the Bering Sea subarea no longer have closures specific to each site because this interim final rule closes the entire Area 543 to Atka mackerel retention and closes the entire Bering Sea subarea to directed fishing for Atka mackerel. For this reason, these sites are removed from Table 6. Column 7 of Table 6 is revised to show the closures in Area 542. These closures are designed to allow limited fishing inside critical habitat, as provided by the RPA. Footnotes 2 and 3 are revised and Footnote 6 is removed to remove reference to the Bering Sea subarea because directed fishing for Atka mackerel is closed in the entire subarea. Footnote 7 is renumbered to Footnote 4 and revised to describe the closure around Tanaga Island/Bumpy Point implemented by this interim final rule. A new Footnote 6 is added to describe the closure around Gramp Rock implemented by this interim final rule. A new Footnote 7 is added to describe the closures around Amatignak Island, Nitrof Point, Unalga & Dinkum Rocks, Ulak Island/Hasgox Point, and Kavalga Island implemented by this interim final rule. These revisions are necessary to insure that the protection measures described by the RPA are implemented.

Table 12 to 50 CFR part 679 is revised to be consistent with the regulations at 50 CFR 223.202(a)(2) and (a)(3) and to add the Kanaga Island/Ship Rock rookery. Section 223.202(a)(2) and (a)(3) specify the 3-nm no-transit areas around rookeries in the Aleutian Islands subarea and Gulf of Alaska. The Walrus Island rookery has the wrong designation for no-transit areas in column 7 of Table 12 to 50 CFR part 679. Walrus Island is located in the Bering Sea subarea and does not have a 3-nm no-transit area, and this interim final rule corrects this error in Table 12 to 50 CFR part 679. This interim final rule also adds Kanaga Island/Ship Rock rookery to Table 12, applying a 3-nm no groundfish fishing area around this site. Kanaga Island/Ship Rock is not included in the § 223.202(a)(2) and (a)(3) regulations and does not have a 3-nm no-transit area. Column 7 of Table 12 to 50 CFR part 679 is revised for each of these sites to indicate the presence or absence of the 3-nm no-transit areas.

## Classification

The Administrator, Alaska Region, NMFS, determined that this interim final rule is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws. Also, this action is directly responding to a reasonable and prudent alternative recommended in a biological opinion, and fulfills NMFS's responsibility under the ESA.

This interim final rule has been determined to be significant for purposes of Executive Order 12866.

Formal section 7 consultation under the ESA was completed for this interim final rule under the FMPs for the groundfish fisheries of the BSAI and the GOA. In the 2010 BiOp, the NMFS Alaska Region Administrator determined that as currently managed, NMFS could not insure that the Alaska groundfish fisheries are not likely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely modify its designated critical habitat. This interim final rule, developed in response to that finding and based on the RPA in the 2010 BiOp, has been determined by NMFS to insure that the Alaska groundfish fisheries are not likely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely modify its designated critical habitat.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. NMFS provided a 30-day public review and comment period on the draft 2010 BiOp and on the draft EA/RIR supporting this action. NMFS reviewed and addressed all comments received before completion of the 2010 BiOp and adjusted the proposed RPA in response to public comment. The 2010 BiOp, with the final RPA, was signed November 24, 2010. Because of the timing of the start of the fisheries, which begins on January 1, 2011, in relation to the completion of the 2010 BiOp, it is impracticable to complete rulemaking before the start of the fisheries with a public review and comment period. This interim final rule implements the final RPA based on consideration of public comments on the draft RPA. NMFS must insure the prosecution of a fishery is compliant with the ESA, which would not be possible if additional time was used to provide for a public review and comment period and agency processing of additional public comments on this action, as the fishery commences on January 1. These protection measures are necessary to prevent the likelihood that these fisheries will jeopardize the

continued existence of endangered Steller sea lions and adversely modify their critical habitat.

There also is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. The Steller sea lion protection measures must be effective by January 1, 2011, when the Pacific cod hook-and-line, pot, and jig fisheries are scheduled to open by regulation. These protection measures are necessary to prevent the likelihood that these fisheries will jeopardize the continued existence of endangered Steller sea lions and adversely modify their critical habitat. Accordingly, it is impracticable to delay for 30 days the effective date of this rule. Therefore, good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(b)(3), and to make the rule effective January 1, 2011.

Although we are waiving prior notice and opportunity for public comment, we are requesting post promulgation comments until January 12, 2011. *Please see* **ADDRESSES** for more information on the ways to submit comments.

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.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0206. Public reporting burden for Federal Fisheries Permit Application is estimated to average 21 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 8, 2010.

**John Oliver,**

*Deputy Assistant Administrator For Operations, National Marine Fisheries Service.*

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.2, remove the definitions for "Harvest limit area for platoon managed Atka mackerel directed fishing" and "Harvest limit area (HLA) for Atka mackerel directed fishing."

■ 3. In § 679.4, remove paragraph (b)(5)(vii) and revise paragraph (b)(5)(vi) to read as follows:

**§ 679.4 Permits.**

* * * * *

(b) * * *

(5) * * *

(vi) *Atka mackerel, pollock, and Pacific cod directed fisheries.*

(A) Indicate use of pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel, or Pacific cod.

(B) Selections for species endorsements will remain valid until an FFP is amended to remove those endorsements or the permit with these endorsements is surrendered or revoked.

* * * * *

■ 4. In § 679.7, revise paragraph (a)(19) and add paragraphs (a)(23), (a)(24), (a)(25), and (d)(10) to read as follows:

**679.7 Prohibitions.**

* * * * *

(a) * * *

(19) *Atka mackerel and Pacific cod prohibition in Area 543.* Retain in Area 543 or in adjacent State waters Pacific cod or Atka mackerel required to be deducted from the Federal TAC specified under § 679.20 on a vessel required to be Federally permitted.

* * * * *

(23) *Pacific cod directed fishing prohibition by hook-and-line, pot, or jig vessels in the Aleutian Islands subarea.* Conduct directed fishing for Pacific cod required to be deducted from the Federal TAC specified under § 679.20 in the Aleutian Islands subarea and adjacent State waters with a vessel required to be Federally permitted using hook-and-line, pot, or jig gear November 1, 1200 hours, A.l.t., to December 31, 2400 hours, A.l.t.

(24) *Atka mackerel directed fishing in the Bering Sea subarea.* Conduct directed fishing for Atka mackerel in the Bering Sea subarea and adjacent State waters with a vessel required to be Federally permitted.

(25) *Atka mackerel directed fishing inside Steller sea lion critical habitat in Area 542.* Conduct directed fishing for Atka mackerel inside waters 10 nm to 20 nm of Gramp Rock and Tag Island rookeries, as described on Table 12 to this part, unless fishing under the authority of a CDQ allocation or an Amendment 80 cooperative quota permit.

* * * * *

(d) * * *

(10) For a CDQ group, exceed a seasonal allowance of Atka mackerel under § 679.20(a)(8)(ii).

* * * * *

■ 5. In § 79.20, remove and reserve paragraph (a)(8)(iii), and revise paragraphs (a)(8)(ii)(A), (a)(8)(ii)(C), and (c)(6) to read as follows:

**§ 679.20 General limitations.**

* * * * *

(a) * * *

(8) * * *

(ii) * * *

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district will be divided equally, after subtraction of the jig gear allocation, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

* * * * *

(C) *Area 542 Atka mackerel harvest limitations.*—(*1*) Atka mackerel catch within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described on Table 12 to this part, is limited to:

(*i*) No more than 10 percent of an Amendment 80 cooperative's Area 542 Atka mackerel allocation, and

(*ii*) No more than 10 percent of a CDQ group's Area 542 Atka mackerel allocation.

(*2*) Atka mackerel harvest within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described on Table 12 to this part, is equally divided between the A and B seasons defined at § 679.23(e)(3).

(*3*) The annual TAC will be no greater than 47 percent of the ABC.

* * * * *

(c) * * *

(6) *BSAI Atka mackerel allocations.* The proposed and final harvest specifications will specify the allocation of BSAI Atka mackerel among gear types as authorized under paragraph (a)(8) of this section.

* * * * *

■ 6. In § 679.22, revise paragraphs (a)(7)(vi) and (a)(8)(iv), and remove and reserve paragraph (b)(6) to read as follows:

**§ 679.22 Closures.**

(a) * * *

(7) * * *

(vi) *Atka mackerel closures.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited within the Bering Sea subarea.

* * * * *

(8) * * *

(iv) *Pacific cod closures.* Directed fishing for Pacific cod required to be deducted from the Federal TAC specified at § 679.20 by vessels named on a Federal Fisheries Permit under § 679.4(b) using trawl, hook-and-line, jig, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are described in Table 5 of this part and its footnotes and are identified by "AI" in column 2.

* * * * *

■ 7. In § 679.23, remove paragraphs (e)(4)(iv) and (e)(4)(v) and revise paragraphs (e)(3) and (e)(4)(iii) to read as follows:

**§ 679.23 Seasons.**

* * * * *

(e) * * *

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the BSAI is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(4) * * *

(iii) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than CDQ pollock; hook-and-line, pot, jig, or trawl CDQ Pacific cod; trawl CDQ Atka mackerel; and fixed gear CDQ sablefish under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1 through the end of each fishing year, except as provided under paragraph (c) of this section.

* * * * *

**679.50 [Amended]**

■ 8. In § 679.50, remove paragraph (c)(1)(x).

■ 9. In 50 CFR part 679, revise Tables 5, 6, and 12 to read as follows:

BILLING CODE 3510–22–P

## Table 5 to Part 679 -- Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| St. Lawrence I./S Punuk I. | BS | 63 04.00 N | 168 51.00 W | | | 20 | 20 | 20 |
| St. Lawrence I./SW Cape | BS | 63 18.00 N | 171 26.00 W | | | 20 | 20 | 20 |
| Hall I. | BS | 60 37.00 N | 173 00.00 W | | | 20 | 20 | 20 |
| St. Paul I./Sea Lion Rock | BS | 57 06.00 N | 170 17.50 W | | | 3 | 3 | 3 |
| St. Paul I./NE Pt. | BS | 57 15.00 N | 170 06.50 W | | | 3 | 3 | 3 |
| Walrus I. (Pribilofs) | BS | 57 11.00 N | 169 56.00 W | | | 10 | 3 | 3 |
| St. George I./Dalnoi Pt. | BS | 56 36.00 N | 169 46.00 W | | | 3 | 3 | 3 |
| St. George I./S. Rookery | BS | 56 33.50 N | 169 40.00 W | | | 3 | 3 | 3 |
| Cape Newenham | BS | 58 39.00 N | 162 10.50 W | | | 20 | 20 | 20 |
| Round (Walrus Islands) | BS | 58 36.00 N | 159 58.00 W | | | 20 | 20 | 20 |
| Kiska I./Cape St. Stephen[15,17] | AI | 51 52.50 N | 177 12.70 E | 51 53.50 N | 177 12.00 E | 20 | 6, 20 | 6, 20 |
| Kiska I. Sobaka & Vega[15,17] | AI | 51 49.50 N | 177 19.00 E | 51 48.50 N | 177 20.50 E | 20 | 6, 20 | 6, 20 |
| Kiska I./Lief Cove[15,17] | AI | 51 57.16 N | 177 20.41 E | 51 57.24 N | 177 20.53 E | 20 | 6, 20 | 6, 20 |
| Kiska I./Sirius Pt.[15] | AI | 52 08.50 N | 177 36.50 E | | | 20 | 6, 20 | 6, 20 |
| Tanadak I. (Kiska)[15] | AI | 51 56.80 N | 177 46.80 E | | | 20 | 6, 20 | 6, 20 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Segula I.[15] | AI | 51 59.90 N | 178 05.80 E | 52 03.06 N | 178 08.80 E | 20 | 6, 20 | 6, 20 |
| Ayugadak Point[15] | AI | 51 45.36 N | 178 24.30 E | | | 20 | 6, 20 | 6, 20 |
| Rat I./Krysi Pt.[15] | AI | 51 49.98 N | 178 12.35 E | | | 20 | 6, 20 | 6, 20 |
| Little Sitkin I.[15] | AI | 51 59.30 N | 178 29.80 E | | | 20 | 6. 20 | 6. 20 |
| Amchitka I./Column[15] | AI | 51 32.32 N | 178 49.28 E | | | 20 | 6. 20 | 6. 20 |
| Amchitka I./East Cape[15] | AI | 51 22.26 N | 179 27.93 E | 51 22.00 N | 179 27.00 E | 20 | 6, 20 | 6, 20 |
| Amchitka I./Cape Ivakin[15] | AI | 51 24.46 N | 179 24.21 E | | | 20 | 6, 20 | 6, 20 |
| Semisopochnoi/Petrel Pt.[15] | AI | 52 01.40 N | 179 36.90 E | 52 01.50 N | 179 39.00 E | 20 | 6, 20 | 6, 20 |
| Semisopochnoi I./Pochnoi Pt.[15] | AI | 51 57.30 N | 179 46.00 E | | | 20 | 6, 20 | 6, 20 |
| Amatignak I./Nitrof Pt.[15] | AI | 51 13.00 N | 179 07.80 W | | | 20 | 6, 20 | 6, 20 |
| Unalga & Dinkum Rocks[15] | AI | 51 33.67 N | 179 04.25 W | 51 35.09 N | 179 03.66 W | 20 | 6, 20 | 6, 20 |
| Ulak I./Hasgox Pt.[15] | AI | 51 18.90 N | 178 58.90 W | 51 18.70 N | 178 59.60 W | 20 | 6, 20 | 6, 20 |
| Kavalga I.[15] | AI | 51 34.50 N | 178 51.73 W | 51 34.50 N | 178 49.50 W | 20 | 6, 20 | 6, 20 |
| Tag I.[15] | AI | 51 33.50 N | 178 34.50 W. | | | 20 | 6. 20 | 6, 20 |
| Ugidak I.[14,15] | AI | 51 34.95 N | 178 30.45 W | | | 20 | 6, 20 | 6, 20 |
| Gramp Rock[14,15] | AI | 51 28.87 N | 178 20.58 W | | | 20 | 6, 20 | 6, 20 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Tanaga I./Bumpy Pt.[14,15] | AI | 51 55.00 N | 177 58.50 W | 51 55.00 N | 177 57.10 W | 20, 10 | 6, 20 | 6, 20 |
| Bobrof I.[14,15] | AI | 51 54.00 N | 177 27.00 W | | | 20, 10 | 6, 20 | 6, 20 |
| Kanaga I./Ship Rock[14,15] | AI | 51 46.70 N | 177 20.72 W | | | 20, 10 | 6, 20 | 6, 20 |
| Kanaga I./North Cape[14,15,16] | AI | 51 56.50 N | 177 09.00 W | | | 20, 10 | 6, 20 | 6, 20 |
| Adak I.[14,15,16] | AI | 51 35.50 N | 176 57.10 W | 51 37.40 N | 176 59.60 W | 20. 10 | 20. 10 | 20. 10 |
| Little Tanaga Strait[14,16] | AI | 51 49.09 N | 176 13.90 W | | | 20, 10 | 20, 10 | 20, 10 |
| Great Sitkin I.[14,16] | AI | 52 06.00 N | 176 10.50 W | 52 06.60 N | 176 07.00 W | 20. 10 | 20. 10 | 20. 10 |
| Anagaksik I.[14,16] | AI | 51 50.86 N | 175 53.00 W | | | 20, 10 | 20, 10 | 20, 10 |
| Kasatochi I.[14,16] | AI | 52 11.11 N | 175 31.00 W | | | 20. 10 | 20. 10 | 20. 10 |
| Atka I./N. Cape[14,16] | AI | 52 24.20 N | 174 17.80 W | | | 20, 10 | 20, 10 | 20, 10 |
| Amlia I./Sviech. Harbor[4, 14,16] | AI | 52 01.80 N | 173 23.90 W | | | 20, 10 | 20, 10 | 20, 10 |
| Sagigik I.[4, 14,16] | AI | 52 00.50 N | 173 09.30 W | | | 20, 10 | 20, 10 | 20, 10 |
| Amlia I./East[4, 14,16] | AI | 52 05.70 N | 172 59.00 W | 52 05.75 N | 172 57.50 W | 20. 10 | 20. 10 | 20. 10 |
| Tanadak I. (Amlia)[4, 14,16] | AI | 52 04.20 N | 172 57.60 W | | | 20. 10 | 20. 10 | 20. 10 |
| Agligadak I.[4, 14,16] | AI | 52 06.09 N | 172 54.23 W | | | 20, 10 | 20, 10 | 20, 10 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Seguam I./Saddleridge Pt.[4, 14,16] | AI | 52 21.05 N | 172 34.40 W | 52 21.02 N | 172 33.60 W | 20, 10 | 20, 10 | 20, 10 |
| Seguam I./Finch Pt.[14,16] | AI | 52 23.40 N | 172 27.70 W | 52 23.25 N | 172 24.30 W | 20, 10 | 20, 10 | 20, 10 |
| Seguam I./South Side[14,16] | AI | 52 21.60 N | 172 19.30 W | 52 15.55 N | 172 31.22 W | 20, 10 | 20, 10 | 20, 10 |
| Amukta I. & Rocks[14,16] | AI | 52 27.25 N | 171 17.90 W | | | 20. 10 | 20. 10 | 20. 10 |
| Chagulak I.[14,16] | AI | 52 34.00 N | 171 10.50 W | | | 20, 10 | 20, 10 | 20, 10 |
| Yunaska I.[14,16] | AI | 52 41.40 N | 170 36.35 W | | | 20, 10 | 20, 10 | 20, 10 |
| Uliaga[5, 13] | BS | 53 04.00 N | 169 47.00 W | 53 05.00 N | 169 46.00 W | 10 | 20 | 20 |
| Chuginadak[13] | GOA | 52 46.70 N | 169 41.90 W | | | 20 | 10 | 20 |
| Kagamil[5, 13] | BS | 53 02.10 N | 169 41.00 W | | | 10 | 20 | 20 |
| Samalga | GOA | 52 46.00 N | 169 15.00 W | | | 20 | 10 | 20 |
| Adugak I.[5] | BS | 52 54.70 N | 169 10.50 W | | | 10 | BA | BA |
| Umnak I./Cape Aslik[5] | BS | 53 25.00 N | 168 24.50 W | | | BA | BA | BA |
| Ogchul I. | GOA | 52 59.71 N | 168 24.24 W | | | 20 | 10 | 20 |
| Bogoslof I./Fire I.[5] | BS | 53 55.69 N | 168 02.05 W | | | BA | BA | BA |
| Polivnoi Rock[9] | GOA | 53 15.96 N | 167 57.99 W | | | 20 | 10 | 20 |
| Emerald I.[12, 9] | GOA | 53 17.50 N | 167 51.50 W | | | 20 | 10 | 20 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Unalaska/Cape Izigan[9] | GOA | 53 13.64 N | 167 39.37 W | | | 20 | 10 | 20 |
| Unalaska/Bishop Pt.[6, 12] | BS | 53 58.40 N | 166 57.50 W | | | 10 | 10 | 3 |
| Akutan I./Reef-lava[6] | BS | 54 08.10 N | 166 06.19 W | 54 09.10 N | 166 05.50 W | 10 | 10 | 3 |
| Unalaska I./Cape Sedanka[9] | GOA | 53 50.50 N | 166 05.00 W | | | 20 | 10 | 20 |
| Old Man Rocks[9] | GOA | 53 52.20 N | 166 04.90 W | | | 20 | 10 | 20 |
| Akutan I./Cape Morgan[9] | GOA | 54 03.39 N | 165 59.65 W | 54 03.70 N | 166 03.68 W | 20 | 10 | 20 |
| Akun I./Billings Head | BS | 54 17.62 N | 165 32.06 W | 54 17.57 N | 165 31.71 W | 10 | 3 | 3 |
| Rootok[9] | GOA | 54 03.90 N | 165 31.90 W | 54 02.90 N | 165 29.50 W | 20 | 10 | 20 |
| Tanginak I.[9] | GOA | 54 12.00 N | 165 19.40 W | | | 20 | 10 | 20 |
| Tigalda/Rocks NE[9] | GOA | 54 09.60 N | 164 59.00 W | 54 09.12 N | 164 57.18 W | 20 | 10 | 20 |
| Unimak/Cape Sarichef | BS | 54 34.30 N | 164 56.80 W | | | 10 | 3 | 3 |
| Aiktak[9] | GOA | 54 10.99 N | 164 51.15 W | | | 20 | 10 | 20 |
| Ugamak I.[9] | GOA | 54 13.50 N | 164 47.50 W | 54 12.80 N | 164 47.50 W | 20 | 10 | 20 |
| Round (GOA)[9] | GOA | 54 12.05 N | 164 46.60 W | | | 20 | 10 | 20 |
| Sea Lion Rock (Amak) | BS | 55 27.82 N | 163 12.10 W | | | 10 | 7 | 7 |
| Amak I. And rocks | BS | 55 24.20 N | 163 09.60 W | 55 26.15 N | 163 08.50 W | 10 | 3 | 3 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Bird I. | GOA | 54 40.00 N | 163 17.2 W | | | 10 | | |
| Caton I. | GOA | 54 22.70 N | 162 21.30 W | | | 3 | 3 | |
| South Rocks | GOA | 54 18.14 N | 162 41.3 W | | | 10 | | |
| Clubbing Rocks (S) | GOA | 54 41.98 N | 162 26.7 W | | | 10 | 3 | 3 |
| Clubbing Rocks (N) | GOA | 54 42.75 N | 162 26.7 W | | | 10 | 3 | 3 |
| Pinnacle Rock | GOA | 54 46.06 N | 161 45.85 W | | | 3 | 3 | 3 |
| Sushilnoi Rocks | GOA | 54 49.30 N | 161 42.73 W | | | 10 | | |
| Olga Rocks | GOA | 55 00.45 N | 161 29.81 W | 54 59.09 N | 161 30.89 W | 10 | | |
| Jude I. | GOA | 55 15.75 N | 161 06.27 W | | | 20 | | |
| Sea Lion Rocks (Shumagins) | GOA | 55 04.70 N | 160 31.04 W | | | 3 | 3 | 3 |
| Nagai I./Mountain Pt. | GOA | 54 54.20 N | 160 15.40 W | 54.56.00 N | 160.15.00 W | 3 | 3 | 3 |
| The Whaleback | GOA | 55 16.82 N | 160 05.04 W | | | 3 | 3 | 3 |
| Chernabura I. | GOA | 54 45.18 N | 159 32.99 W | 54 45.87 N | 159 35.74 W | 20 | 3 | 3 |
| Castle Rock | GOA | 55 16.47 N | 159 29.77 W | | | 3 | 3 | |
| Atkins I. | GOA | 55 03.20 N | 159 17.40 W | | | 20 | 3 | 3 |
| Spitz I. | GOA | 55 46.60 N | 158 53.90 W | | | 3 | 3 | 3 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Mitrofania | GOA | 55 50.20 N | 158 41.90 W | | | 3 | 3 | 3 |
| Kak | GOA | 56 17.30 N | 157 50.10 W | | | 20 | 20 | 3 |
| Lighthouse Rocks | GOA | 55 46.79 N | 157 24.89 W | | | 20 | 20 | 20 |
| Sutwik I. | GOA | 56 31.05 N | 157 20.47 W | 56 32.00 N | 157 21.00 W | 20 | 20 | 20 |
| Chowiet I. | GOA | 56 00.54 N | 156 41.42 W | 56 00.30 N | 156 41.60 W | 20 | 20 | 20 |
| Nagai Rocks | GOA | 55 49.80 N | 155 47.50 W | | | 20 | 20 | 20 |
| Chirikof I. | GOA | 55 46.50 N | 155 39.50 W | 55 46.44 N | 155 43.46 W | 20 | 20 | 20 |
| Puale Bay | GOA | 57 40.60 N | 155 23.10 W | | | 10 | | |
| Kodiak/Cape Ikolik | GOA | 57 17.20 N | 154 47.50 W | | | 3 | 3 | 3 |
| Takli I. | GOA | 58 01.75 N | 154 31.25 W | | | 10 | | |
| Cape Kuliak | GOA | 58 08.00 N | 154 12.50 W | | | 10 | | |
| Cape Gull | GOA | 58 11.50 N | 154 09.60 W | 58 12.50 N | 154 10.50 W | 10 | | |
| Kodiak/Cape Ugat | GOA | 57 52.41 N | 153 50.97 W | | | 10 | | |
| Sitkinak/Cape Sitkinak | GOA | 56 34.30 N | 153 50.96 W | | | 10 | | |
| Shakun Rock | GOA | 58 32.80 N | 153 41.50 W | | | 10 | | |
| Twoheaded I. | GOA | 56 54.50 N | 153 32.75 W | 56 53.90 N | 153 33.74 W | 10 | | |
| Cape Douglas (Shaw I.) | GOA | 59 00.00 N | 153 22.50 W | | | 10 | | |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Kodiak/Cape Barnabas | GOA | 57 10.20 N | 152 53.05 W | | | 3 | 3 | |
| Kodiak/Gull Point[7] | GOA | 57 21.45 N | 152 36.30 W | | | 10, 3 | | |
| Latax Rocks | GOA | 58 40.10 N | 152 31.30 W | | | 10 | | |
| Ushagat I./SW | GOA | 58 54.75 | 152 22.20 W | | | 10 | | |
| Ugak I.[7] | GOA | 57 23.60 N | 152 17.50 W | 57 21.90 N | 152 17.40 W | 10, 3 | | |
| Sea Otter I. | GOA | 58 31.15 N | 152 13.30 W | | | 10 | | |
| Long I. | GOA | 57 46.82 N | 152 12.90 W | | | 10 | | |
| Sud I. | GOA | 58 54.00 N | 152 12.50 W | | | 10 | | |
| Kodiak/Cape Chiniak | GOA | 57 37.90 N | 152 08.25 W | | | 10 | | |
| Sugarloaf I. | GOA | 58 53.25 N | 152 02.40 W | | | 20 | 10 | 10 |
| Sea Lion Rocks (Marmot) | GOA | 58 20.53 N | 151 48.83 W | | | 10 | | |
| Marmot I.[8] | GOA | 58 13.65 N | 151 47.75 W | 58 09.90 N | 151 52.06 W | 15, 20 | 10 | 10 |
| Nagahut Rocks | GOA | 59 06.00 N | 151 46.30 W | | | 10 | | |
| Perl | GOA | 59 05.75 N | 151 39.75 W | | | 10 | | |
| Gore Point | GOA | 59 12.00 N | 150 58.00 W | | | 10 | | |
| Outer (Pye) I. | GOA | 59 20.50 N | 150 23.00 W | 59 21.00 N | 150 24.50 W | 20 | 10 | 10 |
| Steep Point | GOA | 59 29.05 N | 150 15.40 W | | | 10 | | |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm) | Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm) |
| | | Latitude | Longitude | Latitude | Longitude | | | |
| Seal Rocks (Kenai) | GOA | 59 31.20 N | 149 37.50 W | | | 10 | | |
| Chiswell Islands | GOA | 59 36.00 N | 149 34.00 W | | | 10 | | |
| Rugged Island | GOA | 59 50.00 N | 149 23.10 W | | | 10 | | |
| Point Elrington[10, 11] | GOA | 59 56.00 N | 148 15.20 W | | | 20 | | |
| Perry I.[10] | GOA | 60 44.00 N | 147 54.60 W | | | | | |
| The Needle[10] | GOA | 60 06.64 N | 147 36.17 W | | | | | |
| Point Eleanor[10] | GOA | 60 35.00 N | 147 34.00 W | | | | | |
| Wooded I. (Fish I.) | GOA | 59 52.90 N | 147 20.65 W | | | 20 | 3 | 3 |
| Glacier Island[10] | GOA | 60 51.30 N | 147 14.50 W | | | | | |
| Seal Rocks (Cordova)[11] | GOA | 60 09.78 N | 146 50.30 W | | | 20 | 3 | 3 |
| Cape Hinchinbrook[11] | GOA | 60 14.00 N | 146 38.50 W | | | 20 | | |
| Middleton I. | GOA | 59 28.30 N | 146 18.80 W | | | 10 | | |
| Hook Point[11] | GOA | 60 20.00 N | 146 15.60 W | | | 20 | | |
| Cape St. Elias | GOA | 59 47.50 N | 144 36.20 W | | | 20 | | |

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52°N lat. and 53°N lat. and between 173°30' W long. and 172°30' W long.

[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.

[7]The trawl closure between 0 nm to 10 nm is effective from January 20, 1200 hours, A.l.t., through June 10, 1200 hours, A.l.t. Trawl closure between 0 nm to 3 nm is effective from September 1, 1200 hours, A.l.t., through November 1, 1200 hours, A.l.t.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20, 1200 hours, A.l.t., to June 10, 1200 hours, A.l.t. Trawl closure between 0 nm to 20 nm is effective from September 1, 1200 hours, A.l.t., through November 1, 1200 hours, A.l.t.

[9]Restriction area includes only waters of the Gulf of Alaska Area.

[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[12] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 fect (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[13]Trawl, hook-and-line, and pot closures around these sites are limited to waters east of 170°0'00" W long.

[14]Trawl closures around Ugidak I., Gramp Rock, and Tanaga I./Bumpy Point are 20 nm west of 178°0'00"W long. year round. Trawl closures around these sites in waters located east of 178°0'00"W. long. are 0 nm to 20 nm June 10, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t., and 0 nm to 10 nm from January 20, 1200 hours, A.l.t. to June 10, 1200 hours, A.l.t.

[15]In waters west of 177°0'0" W long.

(a) For vessels 60 ft (18.3 m) or greater LOA, the hook- and-line and pot closures are 0 nm to 20 nm from January 1, 0001 hours, A.l.t., to March 1, 1200 hours, A.l.t., and 0 nm to 6 nm from March 1, 1200 hours, A.l.t., to November 1, 1200 hours, A.l.t.

(b) For vessels less than 60 ft (18.3 m), the hook-and-line and pot closures are 0 nm to 6 nm from January 1, 0001 hours, A.l.t., to November 1, 1200 hours, A.l.t.

(c) These restrictions also apply to jig gear vessels of the same LOA.

[16] In waters east of 177°0'0" W long., hook-and-line and pot closures are 0 nm to 20 nm from January 1, 0001 hours, A.l.t., to March 1, 1200 hours, A.l.t., and 0 nm to 10 nm year round. These restrictions also apply to jig gear vessels.

[17]Closures to directed fishing from 0 nm to 20 nm from these sites apply to waters east of 177°0'00" E long. Retention of Pacific cod is prohibited in Area 543, as described in §679.7(a)(19).

Table 6 to Part 679 --Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm) |
| | | Latitude | Longitude | Latitude | Longitude | |
| Kiska I./Cape St. Stephen | Aleutian Islands | 51° 52.50 N | 177° 12.70 E | 51° 53.50 N | 177° 12.00 E | 20 |
| Kiska I./Sobaka & Vega | Aleutian Islands | 51° 49.50 N | 177° 19.00 E | 51° 48.50 N | 177° 20.50 E | 20 |
| Kiska I./Lief Cove | Aleutian Islands | 51° 57.16 N | 177° 20.41 E | 51° 57.24 N | 177° 20.53 E | 20 |
| Kiska I./Sirius Pt. | Aleutian Islands | 52° 08.50 N | 177° 36.50 E | | | 20 |
| Tanadak I. (Kiska) | Aleutian Islands | 51° 56.80 N | 177° 46.80 E | | | 20 |
| Segula I. | Aleutian Islands | 51° 59.90 N | 178° 05.80 E | 52° 03.06 N | 178° 08.80 E | 20 |
| Ayugadak Point | Aleutian Islands | 51° 45.36 N | 178° 24.30 E | | | 20 |
| Rat I./Krysi Pt. | Aleutian Islands | 51° 49.98 N | 178° 12.35 E | | | 20 |
| Little Sitkin I. | Aleutian Islands | 51° 59.30 N | 178° 29.80 E | | | 20 |
| Amchitka I./Column Rocks | Aleutian Islands | 51° 32.32 N | 178° 49.28 E | | | 20 |
| Amchitka I./East Cape | Aleutian Islands | 51° 22.26 N | 179° 27.93 E | 51° 22.00 N | 179° 27.00 E | 20 |
| Amchitka I./Cape Ivakin | Aleutian Islands | 51° 24.46 N | 179° 24.21 E | | | 20 |
| Semisopochnoi/Petrel Pt. | Aleutian Islands | 52° 01.40 N | 179° 36.90 E | 52° 01.50 N | 179° 39.00 E | 20 |
| Semisopochnoi I./Pochnoi Pt. | Aleutian Islands | 51° 57.30 N | 179° 46.00 E | | | 20 |
| Amatignak I. Nitrof Pt.[7] | Aleutian Islands | 51° 13.00 N | 179° 07.80 W | | | 20,10 |
| Unalga & Dinkum Rocks[7] | Aleutian Islands | 51° 33.67 N | 179° 04.25 W | 51° 35.09 N | 179° 03.66 W | 20,10 |
| Ulak I./Hasgox Pt. [7] | Aleutian Islands | 51° 18.90 N | 178° 58.90 W | 51° 18.70 N | 178° 59.60 W | 20,10 |
| Kavalga I.[7] | Aleutian Islands | 51° 34.50 N | 178° 51.73 W | 51° 34.50 N | 178° 49.50 W | 20,10 |
| Tag I.[7] | Aleutian Islands | 51° 33.50 N | 178° 34.50 W | | | 20,10 |
| Ugidak I.[6] | Aleutian Islands | 51° 34.95 N | 178°30.45 W | | | 10, 20 |
| Gramp Rock[6] | Aleutian Islands | 51° 28.87 N | 178° 20.58 W | | | 10, 20 |
| Tanaga I./Bumpy Pt.[4] | Aleutian Islands | 51° 55.00 N | 177° 58.50 W | 51° 55.00 N | 177° 57.10 W | 10, 20 |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm) |
| | | Latitude | Longitude | Latitude | Longitude | |
| Bobrof I. | Aleutian Islands | 51° 54.00 N | 177° 27.00 W | | | 20 |
| Kanaga I./Ship Rock | Aleutian Islands | 51° 46.70 N | 177° 20.72 W | | | 20 |
| Kanaga I./North Cape | Aleutian Islands | 51° 56.50 N | 177° 09.00 W | | | 20 |
| Adak I. | Aleutian Islands | 51° 35.50 N | 176° 57.10 W | 51° 37.40 N | 176° 59.60 W | 20 |
| Little Tanaga Strait | Aleutian Islands | 51° 49.09 N | 176° 13.90 W | | | 20 |
| Great Sitkin I. | Aleutian Islands | 52° 06.00 N | 176° 10.50 W | 52° 06.60 N | 176° 07.00 W | 20 |
| Anagaksik I. | Aleutian Islands | 51° 50.86 N | 175° 53.00 W | | | 20 |
| Kasatochi I. | Aleutian Islands | 52° 11.11 N | 175° 31.00 W | | | 20 |
| Atka I./North Cape | Aleutian Islands | 52°24.20 N | 174° 17.80 W | | | 20 |
| Amlia I./Sviech. Harbor[5] | Aleutian Islands | 52° 01.80 N | 173° 23.90 W | | | 20 |
| Sagigik I.[5] | Aleutian Islands | 52° 00.50 N | 173° 09.30 W | | | 20 |
| Amlia I./East[5] | Aleutian Islands | 52° 05.70 N | 172° 59.00 W | 52° 05.75 N | 172° 57.50 W | 20 |
| Tanadak I. (Amlia)[5] | Aleutian Islands | 52° 04.20 N | 172° 57.60 W | | | 20 |
| Agligadak I.[5] | Aleutian Islands | 52° 06.09 N | 172° 54.23 W | | | 20 |
| Seguam I./Saddleridge Pt.[5] | Aleutian Islands | 52° 21.05 N | 172° 34.40 W | 52° 21.02 N | 172° 33.60 W | 20 |
| Seguam I./Finch Pt.[5] | Aleutian Islands | 52° 23.40 N | 172° 27.70 W | 52° 23.25 N | 172° 24.30 W | 20 |
| Seguam I./South Side[5] | Aleutian Islands | 52° 21.60 N | 172° 19.30 W | 52° 15.55 N | 172° 31.22 W | 20 |
| Amukta I. & Rocks | Aleutian Islands | 52° 27.25 N | 171° 17.90 W | | | 20 |
| Chagulak I. | Aleutian Islands | 52° 34.00 N | 171° 10.50 W | | | 20 |
| Yunaska I. | Aleutian Islands | 52° 41.40 N | 170° 36.35 W | | | 20 |

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22(a)(7)(vi).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site.

[4]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located:

(a) 0 nm to 20 nm seaward of Tanaga I./Bumpy Pt and east of 178° W long., and

(b) 0 nm to10 nm seaward of Tanaga I./Bumpy Pt and west of 178° W long.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA), which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173° 30' W long. and 172° 30' W long.

[6] Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located:

(a) 0 nn to 20 nm seaward of these sites and east of 178° W long., and

(b) 0 nm to 10 nm seaward of these sites and west of 178° W long.

[7]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located:

(a) 0 nm to 20 nm seaward of these sites and west of 179°0'0" W longitude, and

(a) 0 nm to 10 nm seaward of these sites and east of 179°0'0" W longitude

*****

**Table 12 to Part 679 --Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites**

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | No transit[2] |
| | | Latitude | Longitude | Latitude | Longitude | 3 nm |
| Walrus I. (Pribilofs) | Bering Sea | 57 11.00 N | 169 56.00 W | | | N |
| Attu I./Cape Wrangell | Aleutian I. | 52 54.60 N | 172 27.90 E | 52 55.40 N | 172 27.20 E | Y |
| Agattu I./Gillon Pt. | Aleutian I. | 52 24.13 N | 173 21.31 E | | | Y |
| Agattu I./Cape Sabak | Aleutian I. | 52 22.50 N | 173 43.30 E | 52 21.80 N | 173 41.40 E | Y |
| Buldir I. | Aleutian I. | 52 20.25 N | 175 54.03 E | 52 20.38 N | 175 53.85 E | Y |
| Kiska I./Cape St. Stephen | Aleutian I. | 51 52.50 N | 177 12.70 E | 51 53.50 N | 177 12.00 E | Y |
| Kiska I./Lief Cove | Aleutian I. | 51 57.16 N | 177 20.41 E | 51 57.24 N | 177 20.53 E | Y |
| Ayugadak Point | Aleutian I. | 51 45.36 N | 178 24.30 E | | | Y |
| Amchitka I./Column Rocks | Aleutian I. | 51 32.32 N | 178 49.28 E | | | Y |
| Amchitka I./East Cape | Aleutian I. | 51 22.26 N | 179 27.93 E | 51 22.00 N | 179 27.00 E | Y |
| Semisopochnoi/Petrel Pt. | Aleutian I. | 52 01.40 N | 179 36.90 E | 52 01.50 N | 179 39.00 E | Y |
| Semisopochnoi I./Pochnoi | Aleutian I. | 51 57.30 N | 179 46.00 E | | | Y |
| Ulak I./Hasgox Pt. | Aleutian I. | 51 18.90 N | 178 58.90 W | 51 18.70 N | 178 59.60 W | Y |
| Tag I. | Aleutian I. | 51 33.50 N | 178 34.50 W | | | Y |
| Gramp Rock | Aleutian I. | 51 28.87 N | 178 20.58 W | | | Y |
| Tanaga I./Bumpy Pt. | Aleutian I. | 51 55.00 N | 177 58.50 W | 51 55.00 N | 177 57.10 W | Y |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | No transit[2] |
| | | Latitude | Longitude | Latitude | Longitude | 3 nm |
| Kanaga I./Ship Rock | Aleutian I. | 51 46.70 N | 177 20.72 W | | | N |
| Adak I. | Aleutian I. | 51 35.50 N | 176 57.10 W | 51 37.40 N | 176 59.60 W | Y |
| Kasatochi I. | Aleutian I. | 52 11.11 N | 175 31.00 W | | | Y |
| Agligadak I. | Aleutian I. | 52 06.09 N | 172 54.23 W | | | Y |
| Seguam I./Saddleridge Pt. | Aleutian I. | 52 21.05 N | 172 34.40 W | 52 21.02 N | 172 33.60 W | Y |
| Yunaska I. | Aleutian I. | 52 41.40 N | 170 36.35 W | | | Y |
| Adugak I. | Bering Sea | 52 54.70 N | 169 10.50 W | | | Y |
| Ogchul I. | Gulf of Alaska | 52 59.71 N | 168 24.24 W | | | Y |
| Bogoslof I./Fire I. | Bering Sea | 53 55.69 N | 168 02.05 W | | | Y |
| Akutan I./Cape Morgan | Gulf of Alaska | 54 03.39 N | 165 59.65 W | 54 03.70 N | 166 03.68 W | Y |
| Akun I./Billings Head | Bering Sea | 54 17.62 N | 165 32.06 W | 54 17.57 N | 165 31.71 W | Y |
| Ugamak I. | Gulf of Alaska | 54 13.50 N | 164 47.50 W | 54 12.80 N | 164 47.50 W | Y |
| Sea Lion Rock (Amak) | Bering Sea | 55 27.82 N | 163 12.10 W | | | Y |
| Clubbing Rocks (S) | Gulf of Alaska | 54 41.98 N | 162 26.7 W | | | Y |
| Clubbing Rocks (N) | Gulf of Alaska | 54 42.75 N | 162 26.7 W | | | Y |
| Pinnacle Rock | Gulf of Alaska | 54 46.06 N | 161 45.85 W | | | Y |
| Chernabura I. | Gulf of Alaska | 54 45.18 N | 159 32.99 W | 54 45.87 N | 159 35.74 W | Y |

| Column Number 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Site Name | Area or Subarea | Boundaries from | | Boundaries to[1] | | No transit[2] |
| | | Latitude | Longitude | Latitude | Longitude | 3 nm |
| Atkins I. | Gulf of Alaska | 55 03.20 N | 159 17.40 W | | | Y |
| Chowiet I. | Gulf of Alaska | 56 00.54 N | 156 41.42 W | 55 00.30 N | 156 41.60 W | Y |
| Chirikof I. | Gulf of Alaska | 55 46.50 N | 155 39.50 W | 55 46.44 N | 155 43.46 W | Y |
| Sugarloaf I. | Gulf of Alaska | 58 53.25 N | 152 02.40 W | | | Y |
| Marmot I. | Gulf of Alaska | 58 13.65 N | 151 47.75 W | 58 09.90 N | 151 52.06 W | Y |
| Outer (Pye) I. | Gulf of Alaska | 59 20.50 N | 150 23.00 W | 59 21.00 N | 150 24.50 W | Y |
| Wooded I. (Fish I.) | Gulf of Alaska | 59 52.90 N | 147 20.65 W | | | N |
| Seal Rocks (Cordova) | Gulf of Alaska | 60 09.78 N | 146 50.30 W | | | N |

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

N=No, Y=Yes

[FR Doc. 2010–31226 Filed 12–8–10; 4:15 pm]

BILLING CODE 3510–22–C

# Proposed Rules

Federal Register
Vol. 75, No. 238
Monday, December 13, 2010

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 35

**[Doc. No. AMS–FV–10–0091; FV11–35–1 PR]**

### Regulations Issued Under the Export Grape and Plum Act; Revision to the Minimum Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed revisions to the requirements under the Export Grape and Plum Act. The proposed action would change the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule would also update the list of European countries defined in the regulation and remove the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety. This action was recommended by the California Grape and Tree Fruit League (League).

**DATES:** Comments must be received by January 12, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Dawana J. Clark, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail: *Dawana.Clark@ams.usda.gov* or *Kenneth.Johnson@ams.usda.gov*.

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

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under authority of the Export Grape and Plum Act, as amended (7 U.S.C. 591–599), hereinafter referred to as the "Act." The Act promotes the foreign trade of U.S. grown grapes and plums by authorizing the implementation of regulations with minimum grade, quality, container, container marking, and inspection requirements.

This proposed rule would amend "Regulations Issued Under Authority of the Export Grape and Plum Act" (regulations) (7 CFR part 35). The regulated entities are shippers, exporters, and carriers of table grapes for export.

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 35.11 of the regulations establishes minimum size and quality requirements for export shipments of any variety of *vinifera* species table grapes. Currently, such grapes shipped to Japan, Europe, or Greenland must meet a minimum grade of U.S. Fancy Table as specified in the U.S. Standards for Grades of Table Grapes (standards) (7 CFR part 51, sections 51.880–51.992), with the additional requirement that bunches must each weigh at least one-half pound. Section 35.11 also defines the countries in Europe for which the export regulation applies. Finally, § 35.11 provides an additional 2 percent tolerance for sealed berry cracks on both the Ribier and Exotic varieties, which must otherwise meet the minimum requirements for the U.S. No. 1 Table grade as contained in the standards.

This proposed rule would revise § 35.11(a) of the order's administrative rules and regulations by changing the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule would further revise § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule would revise § 35.11(b) by removing the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety.

The Board of Directors of the California Grape and Tree Fruit League (League), which represents a substantial portion of the fresh table grape industry, unanimously recommended that the one-half pound bunch size minimum requirement be removed from § 35.11(a) of the regulations. This would make the minimum bunch size requirement one-quarter pound as defined in the standards for U.S. Fancy Table grade.

There has been an increasing retail demand for table grapes packaged in plastic clamshells, particularly for export markets. One of the most popular package sizes is the 500 gram (approximately 1.1 pounds) clamshell. However, handlers find it difficult to fit two larger (minimum one-half pound) grape bunches into the 500 gram clamshell. The recommended change would allow handlers to use smaller (minimum one-quarter pound) bunches to fill the smaller clamshell packages. This change would offer handlers greater flexibility in packaging and would allow them to pack a greater portion of the crop into the clamshell packages that are popular in the marketplace. The League believes this change would position shippers and exporters to better meet market demand while maintaining pack quality.

The League further recommended that the list of countries used to define the term *Europe* in § 35.11(a) of the regulations be updated to include the current names of European countries for which the export regulations apply. Specifically, the names

"Czechoslovakia," "East Germany," "West Germany," and "Yugoslavia" would be deleted, and the following countries would be added to the remaining list: Bosnia, Croatia, Czech Republic, Germany, Herzegovina, Macedonia, Montenegro, Serbia, and Slovenia. Such action would clarify the European destinations for which the export regulations are applicable.

Finally, the League recommended that § 35.11(b) be revised by removing the additional 2 percent tolerance for sealed berry cracks on Exotic variety grapes. This variety is no longer produced on a commercial basis and the additional tolerance is no longer warranted.

**Initial Regulatory Flexibility Analysis**

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Because California table grapes represent the bulk of U.S. production, it can be assumed that an analysis of the effects of the proposed rule upon members of the California table grape industry would be representative of the entire U.S. industry. According to industry statistics, at least 98 percent of U.S. table grapes are produced in California. Approximately 35 percent of the U.S. table grape crop is exported. There are approximately 550 table grape producers in California, and approximately 75 table grape shippers. The number of table grape exporters and carriers is unknown.

Small agricultural producers are defined as those having annual receipts of less than $750,000; and small agricultural service firms, including shippers, exporters, and carriers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. USDA's National Agricultural Statistics Service reports that California table grape production for 2008 was 724,000 tons, valued at $461 per ton or $333,764,000. Average receipts for California's 550 producers would thus be approximately $606,844, which is lower than the SBA threshold of $750,000 for small producers. According to USDA's Foreign Agricultural Service, 367,643 tons of fresh grapes, valued at $608,757,000, were exported from the U.S. in 2008. Assuming that 98 percent of exported grapes were produced in California, average 2008 receipts for California's 75 shippers would have been $7,954,425, which is higher than the SBA threshold of $7,000,000 for small agricultural firms.

Based upon the preceding calculations, it could be concluded that the majority of California (and therefore, U.S.) table grape producers would be classified as small entities, and that the majority of shippers would be classified as large entities, according to SBA definitions. However, the League believes that a small number of shippers ship a majority of the volume, and that the majority of California table grape shippers should be classified as small entities under SBA's standards. No information regarding the receipts or size of U.S. table grape exporters and carriers is available.

This proposed rule is issued under authority of the Export Grape and Plum Act, as amended (7 U.S.C. 591–599). This rule would amend the "Regulations Issued Under Authority of the Export Grape and Plum Act"(7 CFR part 35) by changing the minimum bunch weight requirement specified in § 35.11(a) for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule would further revise § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule would revise § 35.11(b) by removing the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety.

The League met on June 24, 2010, and unanimously recommended revising the minimum size requirements to allow a one-quarter pound minimum bunch size, instead of the one-half pound minimum bunch size currently specified in the regulations. The one-quarter pound minimum bunch size is specified in the standards for U.S. Fancy Table grade grapes, which are incorporated by reference in the regulations. The League also recommended updating the list of European countries defined in the regulation to reflect the currently recognized names of those countries. Finally, the League recommended removing the additional 2 percent tolerance for sealed berry cracks in the Exotic grape variety. This variety is no longer in commercial production, and an additional tolerance for defects in that variety is no longer warranted.

The League believes that adhering to the smaller bunch size requirement currently specified in the standards for U.S. Fancy Table grade would have a beneficial impact on the entire industry. It is difficult to fill the smaller clamshells with the larger bunches of grapes, thus limiting the number of clamshells that can be shipped. It is easier to fill the clamshells with smaller bunches, which fit into the packages better. Therefore, the League believes that the industry will be able to ship a greater number of 500 gram clamshells to meet market demand. Although they did not identify any potential additional costs to making this change, the League believes that the impact of any additional costs would be outweighed by the advantage of presenting U.S. table grapes in packages most desirable in the retail market. The benefits of this action would be a gain in the overall amount of product sold and an increase in returns to producers, shippers, exporters, and carriers, regardless of size.

Updating the list of European countries for which the export regulations apply and removing the additional 2 percent tolerance for sealed berry cracks on the obsolete Exotic variety merely update the regulations to reflect current terminology and industry trends. These changes are not expected to have any economic impact on large or small entities.

The League recommended that these changes be effective for the 2011 harvesting season, which begins approximately May 1, 2011. These changes would remain in effect on a continuing basis, beginning with the 2011 season. These actions would allow for more practical and efficient packaging while maintaining the overall quality of exported table grapes. These recommended actions are intended to allow shippers and exporters to be more competitive in the marketplace, thereby selling more product.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large table grape shippers, exporters, or carriers. As with all Federal regulatory marketing programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov.*

Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule should be in place prior to the 2011 harvesting season, which begins approximately May 1, 2011. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 35**

Administrative practice and procedures, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 35 is proposed to be amended as follows:

## PART 35—EXPORT GRAPES AND PLUMS

1. The authority citation for 7 CFR part 35 continues to read as follows:

**Authority:** 48 Stat. 734; 7 U.S.C. 591–599.

2. In § 35.11, paragraphs (a) and (b) are revised to read as follows:

**§ 35.11 Minimum requirements.**

* * * * *

(a) Any such variety for export to destinations in Japan, Europe (defined to mean the following countries: Albania, Austria, Belgium, Bosnia, Bulgaria, Croatia, Czech Republic, Denmark, England, Finland, France, Germany, Greece, Herzegovina, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Macedonia, Montenegro, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovenia, Spain, Sweden, Switzerland, Wales), or Greenland shall meet each applicable minimum requirement of the U.S. Fancy Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title). The Black Corinth variety shall be exempt from bunch and berry size requirements.

(b) Any such variety for export to any foreign destination, other than destinations in Japan, Europe, Greenland, Canada, or Mexico, shall meet each applicable minimum requirement of the U.S. No. 1 Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title), except that an additional 2 percent tolerance for sealed berry cracks on the Ribier variety is allowed. The Black Corinth variety shall be exempt from bunch and berry size requirements.

* * * * *

Dated: December 7, 2010.

**Craig Morris,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31197 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 916 and 917

**[Doc. No. AMS–FV–10–0084; FV10–916/917–3 CR]**

## Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referenda order.

**SUMMARY:** This document directs that referenda be conducted among eligible California nectarine, pear, and peach growers to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in California.

**DATES:** The referenda will be conducted from January 12 through February 2, 2011. To vote in these referenda, growers must have produced nectarines, pears, or peaches in California during the period April 1, 2010, through November 30, 2010.

**ADDRESSES:** Copies of the marketing orders may be obtained from the California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, United States Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237.

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

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917), hereinafter referred to as the "orders," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by growers. The referenda shall be conducted from January 12 through February 2, 2011, among eligible California nectarine, pear, and peach growers. Only growers that were engaged in the production of nectarines, pears, or peaches in California during the period of April 1, 2010, through November 30, 2010, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. Since that time, the pear industry has been regulated by a State marketing order. If the results of the pear referendum do not favor continuance, the pear order will be terminated. Otherwise, this suspension will remain in effect unless the pear industry recommends reactivation or termination of the Federal program.

Referendum requirements for the most recent cycle of continuance referenda were suspended by USDA because the orders were being amended at the time (72 FR 12038, March 15, 2007). USDA determined that it would be appropriate to allow the amended orders to operate for a period of time before asking growers to vote on continuance of the programs. The referenda ordered herein will thus be the first conducted since the orders were amended in 2006 (71 FR 41345, July 21, 2006).

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider terminating the orders if fewer than two-thirds of the growers voting in the referenda or growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance of their programs. In evaluating the merits of continuance versus termination, USDA will consider the results of the continuance referenda and all other relevant information regarding operation of the orders. USDA will evaluate the orders' relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the orders would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referenda herein ordered have been approved by the Office of Management and Budget (OMB), under OMB No. 0581–0189, "Generic Fruit Crops." It has been estimated that it will take an average of 20 minutes for each of the approximately 950 growers of California nectarines, pears, and peaches to cast a ballot. Participation is voluntary. Ballots postmarked after February 2, 2011, will not be included in the vote tabulation.

Jerry L. Simmons and Terry J. Vawter of the California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referenda agents of the Secretary of Agriculture to conduct these referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400–900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referenda agents or from their appointees.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements and orders, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

Marketing agreements and orders, Peaches, Pears, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601–674.

Dated: December 7, 2010.

**Craig Morris,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31201 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Doc. No. AMS–FV–10–0081; FV10–930–4 PR]**

## Tart Cherries Grown in the States of Michigan, *et al.*; Final Free and Restricted Percentages for the 2010–2011 Crop Year for Tart Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the establishment of final free and restricted percentages for the 2010–2011 crop year. The percentages are 58 percent free and 42 percent restricted and will establish the proportion of cherries from the 2010 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** Comments must be received by January 12, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5245, Fax: (301) 734–5275; E-mail: *Kenneth.Johnson@ams.usda.gov.*

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

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This proposed rule would establish final free and restricted percentages for tart cherries for the 2010–2011 crop year, beginning July 1, 2010, through June 30, 2011.

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

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts proposed for the 2010–2011 crop year are: District two—Central Michigan; District three—Southern Michigan; District four—New York; District seven—Utah; District

eight—Washington; and District nine—Wisconsin. Districts one, five, and six (Northern Michigan, Oregon, and Pennsylvania, respectively) will not be regulated for the 2010–2011 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2010–2011 crop year. Section 930.52 of the order also provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years is exempt from volume regulation. Thus, Northern Michigan would also not be subject to volume regulation for the 2010–2011 crop year because its 2010 crop production was less than 50 percent of its 5-year average production due to weather related crop damage.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast or from an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted tonnage. The restricted tonnage is then divided by the sum of the crop estimates for the regulated districts to obtain a preliminary restricted percentage for the regulated districts. The preliminary free percentage is the difference between the restricted percentage and 100 percent. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 17, 2010, and computed, for the 2010–2011 crop year, an optimum supply of 170 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 195 million pounds; a 51 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 170 million pounds which resulted in the 2010–2011 poundage requirements (adjusted optimum supply) of 119 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory at the beginning of the 2010–2011 crop year. Subtracting the adjusted optimum supply of 119 million pounds from the USDA crop estimate, (195 million pounds) resulted in a surplus of 76 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (191 million pounds) and resulted in a restricted percentage of 40 percent for the 2010–2011 crop year. The free percentage was 60 percent (100 percent minus 40 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2010–2011 crop year:

| | Millions of pounds | |
|---|---|---|
| Optimum Supply Formula: | | |
| (1) Average sales of the prior three years | | 170 |
| (2) Plus desirable carryout | | 0 |
| (3) Optimum supply calculated by the Board at the June meeting | | 170 |
| Preliminary Percentages: | | |
| (4) USDA crop estimate | | 195 |
| (5) Carryin held by handlers as of July 1, 2009 | | 51 |
| (6) Adjusted optimum supply for current crop year | | 119 |
| (7) Surplus | | 76 |
| (8) USDA crop estimate for regulated districts | | 191 |
| | Free | Restricted |
| (9) Preliminary percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage) | 60 | 40 |

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry. No later than September 15, the Board must recommend final free and restricted percentages to the Secretary.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage and 100 percent is the final restricted percentage.

The Board met on September 10, 2010, to recommend final free and restricted percentages. The actual production reported by the Board was 189 million pounds, which is a 6 million pound decrease from the USDA crop estimate of 195 million pounds.

The Board also recommended an economic adjustment of 20 million pounds to be subtracted from the surplus to adjust the supply for the poor quality and yields due to adverse harvest conditions in various parts of the production area. Handlers stated that processing yields from the 2010 tart cherry harvest were significantly lower this year than in previous years. The lower yields resulted in processors using more raw tart cherries than usual to produce a given amount of finished product.

A 51 million pound carryin (based on handler reports) was subtracted from the optimum supply of 170 million pounds which resulted in the 2010–2011 poundage requirements (adjusted optimum supply) of 119 million pounds. Subtracting the adjusted optimum supply of 119 million pounds from the actual production of 189 million pounds results in a surplus of 70 million pounds of tart cherries. An economic adjustment of 20 million pounds was subtracted from the surplus, resulting in an adjusted surplus of 50 million pounds of tart cherries. The adjusted surplus of 50 million pounds was divided by the production in the regulated districts (120 million pounds) and resulted in a restricted percentage of 42 percent for the 2010–2011 crop year. The free percentage was 58 percent (100 percent minus 42 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2010–2011 crop year:

| | Millions of pounds | |
|---|---|---|
| Optimum Supply Formula: | | |
| (1) Average sales of the prior three years | | 170 |
| (2) Plus desirable carryout | | 0 |
| (3) Optimum supply calculated by the Board | | 170 |
| Final Percentages: | | |
| (4) Board reported production | | 189 |
| (5) Carryin held by handlers as of July 1, 2010 | | 51 |
| (6) Adjusted optimum supply | | 119 |
| (7) Surplus (item 4 minus item 6) | | 70 |
| (8) Economic adjustment | | 20 |
| (9) Adjusted surplus (item 7 minus item 8) | | 50 |
| (10) Production in regulated districts | | 120 |
| | Percentages | |
| | Fee | Restricted |
| (11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage) | 58 | 42 |

The USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 17 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1997/98 through 2008/09, approximately 85 percent of the U.S. tart cherry crop, or 222.7 million pounds, was processed annually. Of the 222.7 million pounds of tart cherries processed, 61 percent was frozen, 27 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 35,550 acres in 2009/10. This represents a 29 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2010/11 crop is 189 million pounds. This production level is 6 million pounds less than the 195.3 million pounds estimated by the National Agricultural Statistics Service (NASS) in June. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year to year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year to year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to States or districts with a 3-year average of production greater than six million pounds, and to States or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased supplies to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The two districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 120 million pounds. A 42 percent restriction means 70 million pounds is available to be shipped to primary markets from these five States. Production levels of 65.3 million pounds for Northwest Michigan, 1.2 million pounds for Oregon, and 2.2 million pounds for Pennsylvania (the unregulated areas in 2010/11), result in an additional 69 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 17 million pounds being available for the primary market. The 70 million pounds from the two Michigan districts, Utah, Washington, Wisconsin, and New York, the 69 million pounds from the other producing States, the 17 million pound release, and the 51 million pound carryin inventory gives a total of 207 million pounds being available for the primary markets.

The econometric model is used to estimate the impact of establishing a reserve pool for this year's crop. With the volume controls, grower prices are estimated to be approximately $0.12 per

pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenue from processed cherries is estimated to be $23 million higher than without restrictions. The without-restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 42 percent volume control would not unduly burden producers, particularly smaller growers. The 42 percent restriction would be applied to the growers in two districts in Michigan, New York, Utah, Washington, and Wisconsin. The growers in the other unregulated areas covered under the marketing order will benefit from this restriction.

Recent grower prices have been as high as $0.44 per pound in 2002–03 when there was a crop failure. Prices in the last two crop years have been $0.372 in 2008–09 and $0.194 per pound in 2009–10. At current production levels, yield is estimated at approximately 10,251 pounds per acre. At this level of yield the cost of production is estimated to be $0.25 per pound (costs were estimated by representatives of Michigan State University with input provided by growers for the current crop). The grower price for 2010–11 will likely be less than $0.25 per pound for the combined free and restricted production. Thus, this year's grower price even with regulation is estimated to be below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0036 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production-shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2010–2011 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2010 of the free and restricted percentages proposed to be established by this rule (58 percent free and 42 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members beleived that no volume regulation would be detrimental to the tart cherry industry.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 10, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

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

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2010–2011 crop. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.256 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

### § 930.256 Final free and restricted percentages for the 2010–2011 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2010, which shall be free and restricted, respectively, are designated as follows: Free percentage, 58 percent and restricted percentage, 42 percent.

Dated: December 7, 2010.

**Craig Morris,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31198 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–02–P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM437 Special Conditions No. 25–10–02–SC]**

## Special Conditions: Gulfstream Model GVI Airplane; Electronic Flight Control System Mode Annunciation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Gulfstream GVI airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include an electronic flight control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** We must receive your comments by January 27, 2011.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM437, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM437. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2011; facsimile (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

### Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

### Type Certification Basis

Under provisions of Title 14 Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122 and 25–124. If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101.

### Novel or Unusual Design Features

The GVI will have a fly-by-wire electronic flight control system. This system provides an electronic interface between the pilot's flight controls and

the flight control surfaces for both normal and failure states, and it generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because electronic flight control system technology has outpaced existing regulations (primarily §§ 25.671 and 25.672), a special condition is proposed to ensure appropriate mode recognition by the flight crew for events which significantly change the operating mode of the electronic flight control system.

**Discussion of Proposed Special Conditions**

Some failures of this system may lead to a degraded operating mode that does not merit a classic "failure warning" but in which flight envelope protection is lost and the flight crew must fly the airplane differently to avoid a stall or to avoid exceeding structural speed limitations. In that case, mode awareness by the flight crew is necessary to avoid confusion and protect safe flight. Therefore, these special conditions for flight control system mode annunciation propose suitable mode annunciation be provided to the flight crew for such events.

**Applicability**

As discussed above, these proposed special conditions are applicable to the GVI. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GVI airplanes.

If the design of the flight control system has multiple modes of operation, a means must be provided to indicate to the flight crew any mode that significantly changes or degrades the normal handling or operational characteristics of the airplane.

Issued in Renton, Washington.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–31177 Filed 12–10–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–1151; Directorate Identifier 95–ANE–10–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric (GE) CF6–45/–50 series and CF6–80A series turbofan engines with certain part number (P/N) side links of the five-link forward mount assembly installed. That AD currently requires an initial and repetitive visual inspection of the side links for cracks, and stripping and reapplying the Sermetel W coating on the side link at every exposure of the side link. That AD also requires replacing the side links and pylon attachment bolts, and inspecting the fail-safe bolt and platform lug if the side links are cracked. This proposed AD would continue to require those same inspections and stripping and reapplying the Sermetel W coating, and would add two part numbers to the applicability. This proposed AD results from a review of the inspection program, which revealed that GE had omitted two affected part numbers from the applicability. We are proposing this AD to prevent failure of the side links and possible engine separation from the airplane.

**DATES:** We must receive any comments on this proposed AD by February 11, 2011.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

**FOR FURTHER INFORMATION CONTACT:** Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7735; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–1151; Directorate Identifier 95–ANE–10–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**Discussion**

The FAA proposes to amend 14 CFR part 39 by superseding AD 2006–12–24, Amendment 39–14650 (71 FR 34807, June 16, 2006). That AD requires inspecting and stripping and reapplying the Sermetel W coating on the side links every time one or more of the bolts attaching the side link to the fan frame—front high-pressure compressor case or the bolt attaching the side link to the mount platform are removed. That AD resulted from a report of a cracked side link found during a routine inspection at a shop visit in 2006. That condition, if not corrected, could result in failure of the side links and possible engine separation from the airplane.

**Actions Since AD 2006–12–24 Was Issued**

Since that AD was issued, GE performed an evaluation of the inspection program and determined that they had omitted the P/Ns for two side links that could be installed on CF6–45/–50 series and CF6–80A series engines. GE introduced those P/N side links in 2000. The age of those side links means that they might have experienced only two shop visits (the average time between shop visits is about four years) since they were put into service. Also, about 50 percent of the new side links are spare parts and they might not be installed on any engines in service yet. Because of those conditions, we haven't received any reports of cracks in the new P/N links. However, due to the similarity in design between these additional parts and the parts that are listed in AD 2006–12–24, the same unsafe condition could exist or develop on the additional side links. Because there is no requirement to inspect or strip and reapply the Sermetel W coating on these additional part numbers in AD 2006–12–24, they might not have been inspected for cracks, which could lead to part failure. This proposed AD would add left-hand side link, P/N 9346M99P03, and right-hand side link, P/N 9346M99P04, to the applicability. We have also updated the applicability section to list the affected engine models in the same way they are listed on their Type Certificate Data Sheets.

**Relevant Service Information**

We have reviewed and approved the technical contents of GE Service Bulletins CF6–50 S/B 72–1255, Revision 1, dated June 17, 2009, and CF6–80A S/B 72–0797, Revision 1, dated June 17, 2009, that describe procedures for inspecting and stripping and reapplying the Sermetel W coating on the side links.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require inspecting and stripping and reapplying the Sermetel W coating on the side links at each exposure of the side link. The proposed AD would require that you do these actions using the service information described previously.

**Costs of Compliance**

We estimate that this proposed AD would affect 194 engines installed on airplanes of U.S. registry. We also estimate that it would take about 8 work-hours per engine to perform the proposed actions, and that the average labor rate is $85 per work-hour. We estimate the parts cost to be negligible because only a small percentage of parts will actually require replacement as a result of this proposed AD. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $131,920 per year.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We have determined that this 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 that the proposed AD:

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

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

3. Would 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. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 removing Amendment 39–14650 (71 FR 34807, June 16, 2006), and by adding a new airworthiness directive to read as follows:

**General Electric Company:** Docket No. FAA–2010–1151; Directorate Identifier 95–ANE–10–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 11, 2011.

**Affected ADs**

(b) This AD supersedes AD 2006–12–24, Amendment 39–14650.

**Applicability**

(c) This AD applies to General Electric (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, CF6–50E2B, CF6–80A, CF6–80A1, CF6–80A2, and CF6–80A3 turbofan engines with left-hand side links part numbers (P/Ns) 9204M94P01, 9204M94P03, 9346M99P01, and 9346M99P03, and right-hand side links, P/Ns 9204M94P02, 9204M94P04, 9346M99P02, and 9346M99P04, installed on the five-link forward engine mount assembly (also known

as Configuration 2). These engines are installed on, but not limited to, Boeing DC–10–30, DC–10–30F (KC–10A, KDC–10), 767, and 747 series airplanes and Airbus A300 and A310 series airplanes.

**Unsafe Condition**

(d) This AD results from a review of the inspection program, which revealed that GE had omitted two affected part numbers from the applicability. We are issuing this AD to prevent failure of the side links and possible engine separation from the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed at every exposure of the side link.

**Inspecting and Stripping and Reapplying the Sermetel W Coating on the Side Links**

(f) Inspect and strip and reapply the Sermetel W coating on each side link at every exposure of the side links. Use the following GE service bulletins (SBs):

(1) For CF6–45/–50 series engines, use paragraphs 3.A. through 3.E. of the Accomplishment Instructions of CF6–50 S/B 72–1255, Revision 1, dated June 17, 2009.

(2) For CF6–80A series engines, use paragraphs 3.A. through 3.E. of the Accomplishment Instructions of CF6–80A S/B 72–0797, Revision 1, dated June 17, 2009.

**Definition of Exposure of Side Link**

(g) A side link is exposed when one or more bolts that attach the side links to the fan frame-front high-pressure compressor case are removed, or when the bolt attaching the side link to the mount platform is removed.

**Alternative Methods of Compliance**

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(i) Contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7735; fax (781) 238–7199, for more information about this AD.

(j) General Electric SBs CF6–50 S/B 72–1255, Revision 1, dated June 17, 2009, and CF6–80A S/B 72–0797, Revision 1, dated June 17, 2009, pertain to the subject of this AD. Contact General Electric Aviation Operations Center (AOC), telephone (877) 432–3272; fax (877) 432–3329; or go to: *https://customer.geae.com*, for a copy of this service information.

Issued in Burlington, Massachusetts, on November 17, 2010.

**Peter A. White,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2010–31172 Filed 12–10–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–1105 Airspace Docket No. 10–AAL–20]**

## Proposed Revision of Class E Airspace; Platinum AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise Class E airspace at Platinum AK. The creation of a new Standard Instrument Approach Procedure (SIAP) at the Platinum Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

**DATES:** Comments must be received on or before January 27, 2011.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1105/ Airspace Docket No. 10–AAL–20 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1105/Airspace Docket No. 10–AAL–20." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace the Platinum Airport, in Platinum, AK, to accommodate the creation of a new SIAP at the Platinum Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at the Platinum Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, *Airspace Designations and Reporting Points,* signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Platinum Airport, Platinum, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points,* signed August 18, 2010, and effective September 15, 2010, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Platinum, AK [Revised]**

Platinum Airport, AK
(Lat. 59°00′56.61″ N., long. 161°49′30.95″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Platinum Airport, and the airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Platinum Airport.

Issued in Anchorage, AK, on November 17, 2010.

**Michael A. Tarr,**

*Alaska Flight Services Information Area Group.*

[FR Doc. 2010–31185 Filed 12–10–10; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2010–1104 Airspace Docket No. 10–AAL–19]**

## Proposed Revision of Class E Airspace; Shungnak, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise Class E airspace at Shungnak, AK. The amendment of Standard Instrument Approach Procedures (SIAPs) at the Shungnak Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

**DATES:** Comments must be received on or before January 27, 2011.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1104/ Airspace Docket No. 10–AAL–19 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–20101104/Airspace Docket No. 10–AAL–19." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Shungnak Airport, in Shungnak, AK, to accommodate amended SIAPs at the Shungnak Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at the Shungnak Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, *Airspace Designations and Reporting Points*, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Shungnak Airport in Shungnak, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points*, signed August 18, 2010, and effective September 15, 2010 is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Shungnak, AK [Revised]**

Shungnak Airport, AK
(Lat. 66°53′17″ N., long. 157°09′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Shungnak Airport and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Shungnak Airport.

Issued in Anchorage, AK, on November 15, 2010.

**Michael A. Tarr,**

*Alaska Flight Services Information Area Group.*

[FR Doc. 2010–31186 Filed 12–10–10; 8:45 am]
BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2010–1103Airspace Docket No. 10–AAL–18]**

## Proposed Revision of Class E Airspace; Savoonga, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise Class E airspace at Savoonga, AK. The amendment of three Standard Instrument Approach Procedures (SIAPs) plus the creation of one new SIAP at the Savoonga Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

**DATES:** Comments must be received on or before January 27, 2011.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1103/ Airspace Docket No. 10–AAL–18 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1103/Airspace Docket No. 10–AAL–18." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace around the Savoonga Airport, in Savoonga, AK, to accommodate amended SIAPs and the additional new SIAP at the Savoonga Airport. This Class E airspace would provide adequate controlled airspace upward from 700 feet and 1,200 feet above the surface, for the safety and management of IFR operations at the Savoonga Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, *Airspace Designations and Reporting Points*, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Savoonga Airport, Savoonga, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points*, signed August 18, 2010 and effective September 15, 2010, is to be amended as follows:

* * * * *

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Savoonga, AK [Revised]**

(Lat. 63° 41′10.56″ N., long. 170°29′35.39″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Savoonga Airport and within 4 miles either side of the 060° bearing from the Savoonga Airport extending from the 7.0-mile radius to 8.5 miles northeast of the Savoonga Airport and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Savoonga Airport.

Issued in Anchorage, AK, on November 15, 2010.

**Michael A. Tarr,**

*Alaska Flight Services Information Area Group.*

[FR Doc. 2010–31184 Filed 12–10–10; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 39

**RIN 3038–AC98**

### General Regulations and Derivatives Clearing Organizations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These proposed amendments would establish the regulatory standards for compliance with derivatives clearing organization (DCO) Core Principles A (Compliance), H (Rule Enforcement), N (Antitrust Considerations), and R (Legal Risk), as well as DCO chief compliance officer (CCO) requirements set forth in Section 5b of the Commodity Exchange Act (CEA). The proposed amendments also would revise procedures for DCO applications, clarify procedures for the transfer of a DCO registration, add requirements for approval of DCO rules establishing a portfolio margining program for customer accounts carried by a futures commission merchant (FCM) that is also registered as a securities broker-dealer (FCM/BD), and make certain technical amendments. The Commission also is proposing amendments to update the definitions of "clearing member" and "clearing organization," and to add definitions for certain other terms.

**DATES:** Submit comments on or before February 11, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AC98, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations, 17 CFR 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov*, or Jonathan M. Lave, Special Counsel, 202–418–5983, *jlave@cftc.gov*, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background
- A. Proposed Definitional and Procedural Amendments
- B. Proposed Regulations Implementing Statutory Requirements for CCOs
- C. Proposed Regulations Implementing DCO Core Principles

II. Discussion
- A. Section 1.3 Definitions
- B. Part 39 Scope and Definitions
  - 1. Scope of Part 39
  - 2. Definitions
- C. Procedures for Registration as a DCO
  - 1. Procedures for DCO Applications
  - 2. Procedures for Transfer of a DCO Registration
- D. Procedures for Submitting DCO Rules To Establish a Portfolio Margining Program
- E. Compliance With Core Principles
- F. Rule Enforcement Requirements
- G. Antitrust Considerations
- H. Legal Risk Requirements

III. Technical Amendments
IV. Effective Date
V. Related Matters
- A. Regulatory Flexibility Act
- B. Paperwork Reduction Act
  - 1. Information Provided by Reporting Entities/Persons
  - 2. Information Collection Comments
- C. Cost-Benefit Analysis

## I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] Title VII of the Dodd-Frank Act[3] amended the CEA[4] to establish a comprehensive new regulatory

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission's Web site at *http://www.cftc.gov.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA, which sets forth core principles with which a DCO must comply in order to be registered and to maintain registration as a DCO. The core principles were added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA).[5] The Commission did not adopt implementing rules and regulations, but instead promulgated guidance for DCOs on compliance with the core principles.[6] Under Section 5b(c)(2), as amended by the Dodd-Frank Act, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.[7]

The Commission continues to believe that, where possible, each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework. At the same time, the Commission recognizes that specific, bright-line regulations may be necessary in order to facilitate DCO compliance with a given core principle and, ultimately, to protect the integrity of the U.S. clearing system. Accordingly, in developing the proposed regulations to update the Commission's regulations, streamline administrative procedures, and implement the DCO core principles as amended by the Dodd-Frank Act, the Commission has endeavored to strike an appropriate balance between establishing general prudential standards and prescriptive requirements.

In this notice of proposed rulemaking, the Commission is proposing to adopt: (1) Certain definitional and procedural amendments to its regulations for DCOs; (2) regulations to implement statutory requirements for CCOs; and (3) requirements that would implement four DCO core principles.

*A. Proposed Definitional and Procedural Amendments*

The Commission is proposing to amend the definitions of "clearing member" and "clearing organization" in § 1.3 of its regulations to make the definitions consistent with terminology currently used in the CEA, as amended by the Dodd-Frank Act. It is also proposing to add to § 1.3 definitions for the terms "customer initial margin," "initial margin," "spread margin," "variation margin," and "margin call." In addition, the Commission is proposing to amend § 39.1 to add definitions of the following terms: "back test," "compliance policies and procedures," "key personnel," "stress test," and "systemically important derivatives clearing organization."

Based on its experience in reviewing DCO applications over the past nearly ten years, the Commission is proposing to amend § 39.3 to streamline the DCO application process by eliminating the 90-day expedited application review period. The proposed amendments also would clarify the procedures to be followed by a DCO when requesting a transfer of its DCO registration due to a corporate change and procedures for submission of DCO rules to establish a portfolio margining program.

*B. Proposed Regulations Implementing Statutory Requirements for CCOs*

Section 725(b) of the Dodd-Frank Act, codified as Section 5b(i) of the CEA,[8] requires each DCO to designate a CCO and further specifies the duties of the CCO.[9] Among the CCO's responsibilities are the preparation and submission to the Commission of an annual compliance report. Proposed § 30.10 codifies the statutory requirements for CCOs and sets forth additional provisions relating to CCOs.

*C. Proposed Regulations Implementing DCO Core Principles*

The Commission is proposing to codify the DCO core principles in Commission regulations and implement those statutory standards with regulatory requirements to the extent necessary to ensure that DCOs are subject to a comprehensive, prudential regulatory regime. This rulemaking is one of a series that will, in its entirety, propose regulations to implement all 18 DCO core principles.[10] Section 725(c) of the Dodd-Frank Act amended Core Principle A, Compliance, to require a DCO to comply with each core principle set forth in Section 5b(c)(2) of the CEA and any requirement that the Commission may impose by rule or regulation pursuant to Section 8a(5) of the CEA.[11] Proposed § 39.10 would implement Core Principle A.

Section 725(c) also amended Core Principle H, Rule Enforcement, to require a DCO to report to the Commission rule enforcement activities and sanctions imposed against clearing members. Proposed § 39.17 would implement Core Principle H.

The Dodd-Frank Act amended Core Principle N, Antitrust Considerations, and Core Principle N now conforms to the amended antitrust core principle for designated contract markets (DCMs). Proposed § 39.23 would codify and implement Core Principle N.

Finally, Section 725(c) of the Dodd-Frank Act established a new Core Principle R, Legal Risk, which is consistent with the legal risk standard recommended by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO).[12] Proposed § 39.27 would implement Core Principle R.

The Commission requests comment on all aspects of the proposed rules, as well as comments on the specific provisions and issues highlighted in the discussion below.

---

[5] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[6] *See* 17 CFR part 39, app. A.

[7] *See* 7 U.S.C. 7a–1(c)(2). Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations "as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the CEA]." 7 U.S.C. 12a(5).

[8] 7 U.S.C. 7a–1(i).

[9] The Dodd-Frank Act established comparable CCO requirements for swap data repositories, swap dealers and major swap participants, FCMs, and swap execution facilities. *See* Sections 728, 731, 732, and 733, respectively, of the Dodd-Frank Act.

[10] *See* 75 FR 63732 (Oct. 18, 2010) (proposing regulations to implement Core Principle P (Conflicts of Interest)); and 75 FR 63113 (Oct. 14 2010) (proposing regulations to implement Core Principle B (Financial Resources)). Concurrent with issuing this notice, the Commission also is proposing regulations to implement Core Principles J (Reporting), K (Recordkeeping), L (Public Information), and M (Information Sharing). The Commission expects to issue two additional notices of proposed rulemaking to implement DCO core principles.

[11] Additionally, Section 805(a) of the Dodd-Frank Act allows the Commission to prescribe regulations for DCOs that the Financial Stability Oversight Council has determined are systemically important financial market utilities. In a future notice of proposed rulemaking, the Commission intends to propose a provision that would require all DCOs, including systemically important DCOs (SIDCOs), to comply with the core principles and the regulations thereunder, except to the extent that there are special requirements applicable to SIDCOs set forth in part 39 of the Commission's regulations.

[12] *See infra* n. 47.

## II. Discussion

### A. Section 1.3 Definitions

The Commission proposes to amend the definitions of "clearing member," "clearing organization," and "customer" found in § 1.3 of its regulations to conform them to the concepts and terminology of the CEA, as amended. The Commission also is proposing to add to § 1.3, definitions for "clearing initial margin," "customer initial margin," "initial margin," "margin call," "spread margin," and "variation margin."

*Clearing member.* The term "clearing member" is currently defined in § 1.3(c) to mean "any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market or registered derivatives transaction execution facility."[13] The Commission proposes to amend § 1.3(c) to define a "clearing member" as "any person[14] that has clearing privileges such that it can process, clear and settle trades through a derivatives clearing organization on behalf of itself or others." This revised definition reflects the fact that a clearing member could have clearing privileges in connection with contracts that are not traded on a DCM, and it further clarifies that the term "clearing member," for purposes of the Commission's regulations, is intended to refer to a person who is authorized to clear through a registered DCO, even if the DCO is not a membership organization.

*Clearing organization.* The term "clearing organization" is currently defined in § 1.3(d) as "the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any designated contract market or registered derivatives transaction execution facility."[15] Recognizing that there may be CFTC regulations or other issuances that remain in effect and use the term "clearing organization" instead of "derivatives clearing organization," the Commission proposes to include both terms as alternatives that have the same meaning. The definition would be the same as the definition of "derivatives clearing organization" in Section 1a(15) of the CEA.[16] Accordingly, the definition would eliminate the references to DCMs and derivatives transaction execution facilities, thereby allowing the definition to encompass futures contracts and swaps, including swaps traded on a swap execution facility (SEF).

*Customer.* The Dodd-Frank Act expanded the Commission's regulatory authority over swaps. The term "customer" in § 1.3(k) is currently defined to refer to a customer trading in any commodity.[17] The Commission proposes to define customer to refer to trading in any commodity or swap as defined in Section 1a(47) of the CEA.

The Commission also is proposing to amend § 1.3 to add definitions of terms that it expects will be used in future proposed regulations to implement Core Principle D, Risk Management, as well as other provisions of the CEA.

*Clearing initial margin.* Proposed § 1.3(jjj) would define the term "clearing initial margin" to mean initial margin posted by a clearing member with a DCO.

*Customer initial margin.* Proposed § 1.3(kkk) would define the term "customer initial margin" to mean initial margin posted by a customer with an FCM, or by a non-clearing member FCM with a clearing member.

*Initial margin.* Proposed § 1.3(lll) would define the term "initial margin" to mean money, securities, or property posted by a party to a futures, option, or swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

*Margin call.* Proposed § 1.3(mmm) would define the term "margin call" to mean a request from an FCM to a customer to post customer initial margin; or a request by a DCO to a clearing member to post clearing initial margin or variation margin. This would include margin calls for additional funds, sometimes referred to as "super margin" calls or "special margin" calls, both of which are effectively calls for initial margin.

*Spread margin.* Proposed § 1.3(nnn) would define the term "spread margin" to mean a reduced initial margin that takes into account correlations between certain related positions held in a single account.

*Variation margin.* Proposed § 1.3(ooo) would define the term "variation margin" to mean a payment made by a party to a futures, option, or swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

### B. Part 39 Scope and Definitions

The Commission proposes to revise the statement of the scope of part 39 and to add definitions that will appear elsewhere in part 39.

#### 1. Scope of Part 39

In a future rulemaking, the Commission intends to reorganize part 39 into three subparts, with one subpart containing provisions applicable only to SIDCOs. Accordingly, the Commission intends to revise the statement of scope in a future rulemaking to establish that the provisions of subparts A and B of part 39 will apply to all DCOs, except to the extent that there are superseding provisions that apply to SIDCOs in subpart C.[18] Because this reorganization is not being proposed in the current rulemaking, the Commission is not yet proposing any change to the text of § 39.1. However, as a technical matter in order to propose certain definitions, the Commission is proposing to redesignate the current text of § 39.1 as § 39.1(a) "Scope," and to add a new paragraph (b) "Definitions."

---

[13] 17 CFR 1.3(c).

[14] The term "person" is defined as an individual, association, partnership, corporation, or trust. *See* Section 1a(38) of the CEA; 7 U.S.C. 1a(38); and 17 CFR 1.3(u).

[15] 17 CFR 1.3(d).

[16] Section 1a(15) of the CEA; 7 U.S.C. 1a(15), defines a derivatives clearing organization as follows:

(A) IN GENERAL.—The term "derivatives clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(B) EXCLUSIONS.—The term "derivatives clearing organization" does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

[17] 17 CFR 1.3(k).

[18] In this future rulemaking, the Commission also expects to propose a technical amendment to update the § 39.1 citation to the definition of "derivatives clearing organization" in the CEA (term formerly defined in Section 1a(9) of the CEA; renumbered as Section 1a(15) by the Dodd-Frank Act).

2. Definitions

Proposed § 39.1(b) would define certain terms, for purposes of part 39. Although some of these terms may be defined in § 1.3 or other sections of the Commission's regulations, the definitions set forth in § 39.1(b) would apply to provisions contained in part 39 and such other rules as may explicitly cross-reference these definitions.

*Back test.* The proposed rule would define the term "back test" to mean a test that compares a DCO's initial margin requirements with historical price changes to determine the extent of actual margin coverage. The Commission anticipates using this term in regulations relating to Core Principle D, Risk Management.[19]

*Compliance policies and procedures.* The proposed rule would define the term "compliance policies and procedures" to mean all policies, procedures, codes, including a code of ethics, safeguards, rules, programs, and internal controls that are required to be adopted or established by a DCO pursuant to the CEA, Commission regulations, or orders. Compliance policies and procedures would include those policies and procedures that are not explicitly required by law, such as those relating to customer record protection and procedures and safeguards for electronic signatures.

*Customer account or customer origin.* The proposed rule would define these terms to mean a clearing member's account held on behalf of customers, as defined in § 1.3(k) of the Commission's regulations. A customer account is also a futures account, as that term is defined by § 1.3(vv) of the Commission's regulations. The Commission proposes to define these terms as distinguishable from a "house account" or "house origin," in connection with proposed reporting and other requirements under part 39, which may make such a distinction.[20]

*House account or house origin.* The proposed rule would define "house account" or "house origin" to mean a clearing member's combined proprietary accounts, as defined in § 1.3(y).

*Key personnel.* The proposed rule would define the term "key personnel" to mean personnel who play a significant role in the operation of the DCO, provision of clearing and settlement services, risk management, or oversight of compliance with the CEA and Commission regulations. Key personnel would include, but would not be limited to, those persons who are or perform the functions of any of the following: The chief executive officer; president; CCO; chief operating officer; chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

*Stress test.* The proposed rule would define the term "stress test" to mean a test that compares the impact of a potential price move, change in option volatility, or change in other inputs that affect the value of a position, to the financial resources of a DCO, clearing member, or large trader to determine the adequacy of such financial resources.

*Systemically important derivatives clearing organization.* The proposed rule would define the term "systemically important derivatives clearing organization" to mean a financial market utility that is a DCO registered under Section 5b of the CEA, and which has been designated by the Financial Stability Oversight Council to be systemically important. As noted above, the Commission intends that certain proposed rules would apply only to SIDCOs.

*C. Procedures for Registration as a DCO*

1. Procedures for DCO Applications

The proposed rules would remove the 90-day expedited review provision. In 2001, the Commission adopted § 39.3 to implement the CFMA's core principle regime and to establish registration standards and procedures for DCOs, which were then a new category of registrant.[21] Although the CEA does not require the Commission to review DCO applications within a prescribed time period or subject to any prescribed procedures, the Commission nonetheless adopted the time period and procedures specified in Section 6(a) of the CEA for review of applications for designation of a contract market or registration of a derivatives transaction execution facility.[22] The Commission initially provided for an expedited 60-day review process, which it changed to a 90-day review process in 2006.[23]

Since 2006, the Commission has learned that a 90-day expedited review period is not practicable in most instances, particularly in cases where the margin methodology to be applied or the products to be cleared are novel or complex. The proposed amendments to § 39.3 would therefore eliminate the 90-day expedited review period provided under § 39.3(a)(3) and remove related provisions for termination of the 90-day review under § 39.3(b). The Commission notes that the 180-day review period does not preclude it from rendering a decision in less than 180 days.

2. Procedures for Transfer of a DCO Registration

The Commission is proposing to add a new paragraph (h) to § 39.3 to formalize the procedures that a DCO must follow when requesting the transfer of its DCO registration and positions comprising open interest for clearing and settlement, in anticipation of a corporate change (*e.g.*, a merger, corporate reorganization, or change in corporate domicile), which results in the transfer of all or substantially all of the DCO's assets to another legal entity. Under proposed § 39.3(h), the DCO would submit to the Commission a request for transfer no later than three months prior to the anticipated corporate change, in accordance with the reporting requirements of proposed § 39.19.[24] The request would include: (1) The underlying agreement that governs the corporate change; (2) a narrative description of the corporate change, including the reason for the change, its impact on the DCO's financial resources, governance, and operations, and its impact on the rights and obligations of clearing members and market participants holding the positions that comprise the DCO's open interest; (3) a discussion of the transferee's ability to comply with the CEA, including the core principles applicable to DCOs, and the Commission's regulations thereunder; (4) the governing documents of the transferee, including but not limited to articles of incorporation and bylaws; (5) the transferee's rules marked to show changes from the current rules of the

[19] *See* Section 5b(c)(2)(D) of the CEA; 7 U.S.C. 7a–1(c)(2)(D).

[20] For example, in a separate notice of proposed rulemaking, the Commission proposes to require DCOs to provide the Commission with a daily report of initial margin requirements and margin on deposit for each clearing member, by customer origin and house origin.

[21] *See* 66 FR 45604 (Aug. 29, 2001).

[22] *See* 17 CFR 39.3(a) (providing that the Commission will review the application for registration as a DCO pursuant to the 180-day time frame and procedures specified in Section 6(a) of the CEA).

[23] *See* 71 FR 1953 (Jan. 12, 2006) (extending the 60-day review period to 90 days based on the Commission's experience in processing applications).

[24] In a separate notice of proposed rulemaking, the Commission is proposing to require a DCO to notify the Commission of various corporate events, all of which would require three months advance notice. The Commission is proposing to allow an exception to the three-month prior reporting requirement if the DCO does not know and reasonably could have not have known of the anticipated change three months prior to that change. In such event, the DCO would be required to promptly report such change to the Commission as soon as it knows of the change.

DCO; and (6) a list of contracts, agreements, transactions, or swaps for which the DCO requests transfer of open interest.

Proposed § 39.3(h) also would require, as a condition of approval, that the DCO submit a representation that it is in compliance with the CEA, including the DCO core principles, and the Commission's regulations. In addition, the DCO would have to submit a representation by the transferee that the transferee understands that a DCO is a regulated entity that must comply with the CEA, including the DCO core principles and the Commission's regulations, in order to maintain its registration as a DCO; and further, that the transferee will continue to comply with all self-regulatory requirements applicable to a DCO under the CEA and the Commission's regulations.

The Commission would review any requests for transfer of registration and open interest as soon as practicable and determine whether the transferee would be able to continue to operate the DCO in compliance with the CEA and the Commission's regulations. The request would be approved or denied pursuant to a Commission order.

The Commission notes that there are differences in the proposed procedures for registration/designation transfer requests for DCOs, DCMs, swap execution facilities, and swap data repositories. The Commission requests comment on the proposed requirements for registration transfer requests under § 39.3(h), generally, and, more specifically, solicits comment on the extent to which there should be uniformity or differentiation in procedures applied to different types of registrants.

*D. Procedures for Submitting DCO Rules To Establish a Portfolio Margining Program*

Section 713(a) of the Dodd-Frank Act amended Section 15(c)(3) of the Securities Exchange Act of 1934 [25] to require the SEC to adopt rules that permit securities to be held in a portfolio margining account that is regulated as a futures account pursuant to a portfolio margining program approved by the Commission. Similarly, Section 713(b) of the Dodd-Frank Act amended Section 4d of the CEA[26] to require the Commission to adopt rules that permit futures and options on futures to be held in a portfolio margining account regulated as a securities account pursuant to a portfolio margining program approved by the SEC. In both cases, the SEC and the Commission are required to consult with each other in the adoption of such rules in order to ensure that the relevant transactions and accounts are subject to comparable requirements to the extent practicable for similar products.

As a first step towards meeting this goal, the Commission is proposing to amend part 39 to include procedural requirements for a DCO that intends to offer a portfolio margining program. Under proposed § 39.4(e), a DCO seeking to provide clearing and settlement services for a futures portfolio margining account that holds securities would have to submit its proposed portfolio margining rules for Commission approval under § 40.5 of the Commission's regulations. This will enable the DCO to satisfy the statutory requirement that the futures portfolio margining program be approved by the Commission, as a pre-condition to the SEC permitting securities to be held in the account. Concurrent with its request for rule approval, the DCO also would be required to submit a petition for a related order under Section 4d of the CEA.[27]

The Commission is proposing only procedural requirements as part of this notice. It anticipates consulting with the SEC in the future to determine the substantive requirements it would impose in approving a futures portfolio margining program and, additionally, in granting an exemption under Section 4(c) of the CEA and an order under Section 4d of the CEA to permit futures and options on futures to be held in a securities portfolio margining account. The Dodd-Frank Act does not set a deadline for these actions, and the Commission believes that it is important to give this matter due consideration, both in terms of consultation with the SEC and, more broadly, in obtaining industry views on the topic before proposing substantive regulations or other guidance. The Commission requests comment on possible strategies for the Commission and the SEC to address issues raised by portfolio margining and to facilitate the availability of portfolio margining programs for qualified participants.

*E. Compliance With Core Principles*

As noted above, Section 725(c) of the Dodd-Frank Act amended Core Principle A to require a registered DCO to comply with each core principle set forth in Section 5b(c)(2) of the CEA and any requirement that the Commission may impose by rule or regulation pursuant to Section 8a(5) of the CEA.[28] The Dodd-Frank Act also provides a DCO with reasonable discretion to establish the manner by which it complies with each core principle.[29] Proposed §§ 39.10(a) and 39.10(b) would codify these provisions, respectively.

Section 725(b) of the Dodd-Frank Act amended Section 5b of the CEA to require each DCO to designate an individual as its CCO, responsible for the DCO's compliance with Commission regulations and filing an annual compliance report.[30] Proposed § 39.10(c)(1) would require each DCO to establish the position of CCO and to designate a CCO. The proposed provision also would require that the DCO provide the CCO with the responsibility and authority to develop and enforce appropriate compliance policies and procedures to fulfill his or her duties.

Proposed § 39.10(c)(1)(i) would require a DCO to designate an individual with the background and skills appropriate for fulfilling the responsibilities of the position. The rule also would require the person to meet minimum ethical requirements, and prohibit from serving as a CCO any person who would be disqualified from registration under Sections 8a(2) or 8a(3) of the CEA.[31]

The Dodd-Frank Act requires that a CCO report directly to the board of directors or the senior officer of the DCO.[32] This requirement is codified as proposed § 39.10(c)(1)(ii). The proposed rule also would require the board of directors or the senior officer to approve the compensation of the CCO.

Proposed § 39.10(c)(1)(iii) would require a CCO to meet with the board of directors or the senior officer at least once a year to discuss the effectiveness of the DCO's compliance policies and

[25] 15 U.S.C. 78o(c)(3).

[26] 7 U.S.C. 6d.

[27] An order under Section 4d of the CEA would permit the commingling of exchange-traded futures and options on futures with securities.

[28] Core Principle A provides that "To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5)." 7 U.S.C. 7a–1(c)(2)(A)(i).

[29] Core Principle A provides that "Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph." 7 U.S.C. 7a–1(c)(2)(A)(ii).

[30] *See* Section 5b(i) of the CEA; 7 U.S.C. 7a–1(i).

[31] 7 U.S.C. 12a(2) and (3).

[32] *See* Section 5b(i)(2)(A) of the CEA; 7 U.S.C. 7a–1(i)(2)(A). Proposed § 1.3(zz) defines the term "Board of Directors" to mean "the Board of Directors or Board of Governors of a company or organization, or equivalent governing body." *See* 75 FR at 63747.

procedures, as well as the administration of those policies and procedures by the CCO. The meeting would afford an opportunity for the CCO and the board of directors or the senior officer to speak freely about any compliance issues of concern, and would further the Commission's goal of promoting self-assessment and internal oversight of compliance matters. The Commission notes that the requirement for an annual discussion would not preclude the board of directors or the senior officer from meeting with the CCO more frequently.[33]

Proposed § 39.10(c)(1)(iv) would require that a change in the designation of the individual serving as the CCO be reported to the Commission, in accordance with the requirements of proposed § 39.19(c)(4)(xi).[34]

The Dodd-Frank Act sets forth the duties of a CCO,[35] and proposed § 39.10(c)(2) codifies those duties in paragraphs (i)–(vi).[36] The Commission believes the statutory duties are largely self-explanatory, but in the interest of clarity, those duties are briefly discussed.

Proposed § 39.10(c)(2)(i) would require the CCO to review the DCO's compliance with each core principle.

Under proposed § 39.10(c)(2)(ii), in consultation with the board of directors or the senior officer, the CCO also would be required to resolve any conflicts of interest that may arise. These conflicts would include: Conflicts between business considerations and compliance requirements; conflicts between the consideration to restrict clearing membership to certain types of clearing members and the requirement that a DCO provide fair and open access; conflicts between and among different categories of clearing members of the DCO; conflicts between a DCO's clearing members and its management; and conflicts between a DCO's management and members of the board of directors.

Proposed §§ 39.10(c)(2)(iii) and (iv) would require the CCO to administer each policy and procedure that is required under Section 5h of the CEA, and ensure compliance with the CEA and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations under Section 5b of the CEA, respectively. Under proposed § 39.10(c)(2)(v), the CCO also would establish procedures for the remediation of noncompliance issues identified by the CCO through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint. Finally, under proposed § 39.10(c)(2)(vi), a CCO would establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

In addition to the duties set forth in the Dodd-Frank Act, proposed § 39.10(c)(2)(vii) would require a CCO to develop a compliance manual designed to promote compliance with the applicable laws, rules, and regulations, and a code of ethics designed to prevent ethical violations and to promote ethical conduct. The Commission believes that these tools are essential to a CCO's ability to fulfill the duties imposed by the CEA and the Commission's regulations.

Section 725(b) of the Dodd-Frank Act requires a CCO to prepare an annual report that describes the DCO's compliance with the CEA, regulations promulgated under the CEA, and each policy and procedure of the DCO, including the code of ethics and conflicts of interest policies.[37] Proposed § 39.10(c)(3) would codify these requirements.

Proposed § 39.10(c)(4) would establish requirements for submission of the annual report to the Commission. The rule would require the CCO to provide the annual report to the board or the senior officer for review prior to submitting the annual report to the Commission, and it would require the DCO to record such action in board minutes or otherwise, as evidence of compliance with this requirement. The proposed rule would further specify that the annual report be electronically provided to the Commission not more than 90 days after the end of the DCO's fiscal year,[38] and that it be submitted concurrently with the fiscal year-end audited financial statement that is required to be furnished to the Commission pursuant to proposed § 39.19(c)(3)(ii).[39]

The Dodd-Frank Act requires the CCO's annual report to include a certification that, under penalty of law, the compliance report is accurate and complete.[40] Proposed § 39.10(c)(4)(ii) would codify this certification requirement.

Proposed § 39.10(c)(4)(iii) would require a DCO to promptly submit an amended annual report if material errors or omissions in the report are identified after the report is submitted to the Commission. If a DCO is unable to submit an annual report within 90 days after the end of the DCO's fiscal year, proposed § 39.10(c)(4)(iv) would permit the DCO to request that the Commission extend the deadline, provided the DCO's failure to submit the report in a timely manner could not be avoided without unreasonable effort or expense. Extensions of the deadline would be granted at the discretion of the Commission.

Proposed § 39.10(c)(5) would require a DCO to maintain: (i) A copy of the policies and procedures adopted in furtherance of compliance with the CEA and Commission regulations; (ii) copies of materials, including written reports provided to the board of directors or the senior officer in connection with review of the annual report; and (iii) any records relevant to the DCO's annual report, including work papers and financial data. These records are designed to provide Commission staff with a basis upon which to determine whether the DCO has complied with the applicable Commission regulations and DCO rules and policies. The DCO would be required to maintain these records in accordance with § 1.31 and proposed § 39.20 of the Commission's regulations.

The Commission specifically seeks comment on the degree of flexibility in the reporting structure for CCOs that should be afforded under the proposed rules. Specifically, the Commission requests comment on: (i) Whether it would be more appropriate for a CCO to report to the senior officer or the board of directors; (ii) whether the senior officer or board of directors generally is a stronger advocate of compliance matters within an organization; and (iii) whether the proposed rules allow for sufficient flexibility with regard to a DCO's business structure.

The Commission also is seeking comment on whether additional limitations should be placed on the persons who may be designated as a CCO. For example, should the

[33] In addition to the board of directors or the senior officer, under the Commission's proposed § 39.13(g), a DCO's Risk Management Committee would be required to review the performance of the CCO and make recommendations to the board. *See* 75 FR at 63750.

[34] The notification requirement is being proposed by the Commission in a separate notice of proposed rulemaking.

[35] *See* Section 5b(i)(2) of the CEA; 7 U.S.C. 7a–1(i)(2).

[36] The Commission notes, however, that the first statutory requirement identified under the heading "duties," *i.e.*, that the CCO report to the board of directors or the senior officer, is codified in proposed § 39.10(c)(1)(ii).

[37] *See* Section 5b(i)(3) of the CEA; 7 U.S.C. 7a–1(i)(3).

[38] *See also* § 1.10(b)(2)(ii) (90-day time period for an FCM to submit the Form 1–FR–FCM to the Commission).

[39] The annual reporting requirement of proposed § 39.19(c)(3)(ii) is being proposed by the Commission in a separate notice of proposed rulemaking.

[40] *See* Section 5b(i)(3)(B)(ii) of the CEA; 7 U.S.C. 7a-1(i)(3)(B)(ii).

Commission restrict the CCO position from being held by an attorney who represents the DCO or its board of directors, such as an in-house or general counsel? The rationale for such a restriction is based on the concern that the interests of defending the DCO would be in conflict with the duties of the CCO.

The Commission specifically seeks comment on whether there is a need for a regulation requiring the DCO to insulate a CCO from undue pressure and coercion. Is it necessary to adopt rules to address the potential conflict between and among compliance interests, commercial interests, and ownership interests of a DCO? If there is no need for such a provision, how would such potential conflicts be addressed?

The Commission additionally requests comment on an appropriate effective date for the CCO requirements. In particular, for a DCO that does not currently have an employee designated to perform the function of a CCO, what is a reasonable time frame for hiring a CCO and for implementing the required compliance policies and procedures set forth in § 39.10?

*F. Rule Enforcement Requirements*

Section 725(c) of the Dodd-Frank Act amended Core Principle H, Rule Enforcement, to require a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and resolution of disputes.[41] Proposed § 39.17(a)(1) would codify these requirements. Section 725(c) of the Dodd-Frank Act also required a DCO to have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization.[42] Proposed § 39.17(a)(2) would codify this requirement. Additionally, pursuant to the reporting requirement of Core Principle H, proposed § 39.17(a)(3) would cross-reference the proposed rule enforcement reporting requirements of proposed § 39.19(c)(4)(xiii).[43]

Under proposed § 39.17(b), the board of directors of a DCO may delegate to the DCO's Risk Management Committee responsibility for compliance with the requirements of paragraph (a) of § 39.17, unless the responsibilities are otherwise required to be carried out by the CCO.

Finally, proposed § 39.17(c) would cross-reference proposed § 39.10(c)(2)(ii), which provides the CCO with the duty to resolve conflicts of interest.[44]

*G. Antitrust Considerations*

Section 725(c) of the Dodd-Frank Act amended Core Principle N, Antitrust Considerations, conforming the standard for DCOs to the standard applied to DCMs under Core Principle 19.[45] Proposed § 39.23 would codify Core Principle N as amended by the Dodd-Frank Act. The Commission is taking the same approach with respect to DCM Core Principle 19, but requests comment on whether there are additional standards or requirements that should be imposed to more effectively implement the purposes of DCO Core Principle N.

*H. Legal Risk Requirements*

Section 725(c) of the Dodd-Frank Act set forth a new Core Principle R, Legal Risk. Pursuant to Core Principle R, "[e]ach derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization."[46] This core principle is consistent with the recommendations of CPSS–IOSCO, which conclude that "if the legal framework [of a central counterparty (CCP), in this case, a DCO] is underdeveloped, opaque or inconsistent, the resulting legal risk could undermine the [CCP]'s ability to operate effectively," and increase the likelihood that market participants may suffer a loss because the CCP's rules, procedures, and contracts that support its activities, property rights, and other interests are not supported by relevant laws and regulations.[47]

Proposed § 39.27(a) would address these concerns, in part, by requiring a DCO to be duly organized, legally authorized to conduct clearing business in the relevant jurisdiction, and to remain in good standing at all times. The proposed rule also would require a DCO that provides clearing services outside the United States to be duly organized to conduct business in the relevant jurisdiction, to remain in good standing at all times, and to be authorized by the appropriate foreign licensing authority.

Proposed § 39.27 would set forth requirements for various activities of a DCO, as applicable. Proposed § 39.27(b)(1) would require the legal framework of a DCO to provide for the DCO to act as a counterparty, including novation. Through novation, the DCO is substituted as the counterparty to both the buyer and the seller of the original contract.

Proposed § 39.27(b)(2) would require the legal framework of a DCO to address netting arrangements. Netting reduces the number and value of deliveries and payments needed to settle a set of transactions and reduces the potential losses to a DCO in the event of a clearing member's default.

Proposed § 39.27(b)(3) would require the legal framework to provide for the DCO's interest in collateral. Generally, collateral arrangements involve either a pledge or a title transfer. In either case, a DCO should have a high degree of assurance that its interest has been validly created in the relevant jurisdiction, validly perfected, if necessary, and is enforceable under applicable law.

Proposed § 39.27(b)(4) would require the legal framework to provide for the steps that the DCO would take to address the default of a clearing member, including but not limited to, the unimpeded ability to liquidate

---

[41] Core Principle H provides that:

Each derivatives clearing organization shall—

(i) maintain adequate arrangements and resources for—

(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

(II) the resolution of disputes;

(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

*See* Section 5b(c)(2)(H) of the CEA; 7 U.S.C. 7a–1(c)(2)(H).

[42] *Id.*

[43] The Commission is proposing reporting requirements in a separate notice of proposed rulemaking.

[44] *See supra* Section II.E. of this notice.

[45] Core Principle N provides as follows: "Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or (ii) impose any material anticompetitive burden." *See* Section 5b(c)(2)(N) of the CEA; 7 U.S.C. 7a–1(c)(2)(N). *See also* Section 5(d)(19) of the CEA; 7 U.S.C. 7(d)(19) (DCM Core Principle 19); and proposed § 38.100 of the Commission's regulations, which is being proposed by the Commission in a separate notice of proposed rulemaking.

[46] Section 5b(c)(2)(R) of the CEA; 7 U.S.C. 7a–1(c)(2)(R).

[47] *See* Comm. on Payment & Settlement Sys. & Technical Comm. of the Int'l Org. of the Sec. Comm'ns CPSS–IOSCO, *Recommendations for Central Counterparties*, at 13, CPSS Publication No. 64 (Nov. 2004). In November 2004, the CPSS–IOSCO Task Force on Securities Settlement Systems issued Recommendations for Central Counterparties. The CPSS–IOSCO recommendations identify legal risk as the risk that a CCP's rules, procedures, and contracts are not supported by relevant laws and regulations. *Id.* at 9. Under CPSS–IOSCO Recommendation 1, a CCP should mitigate legal risk through the development of a sound, legal framework. *Id.* at 4, 13. The Commission notes that CPSS and IOSCO are currently reviewing this standard and it may be revised.

collateral and close out or transfer positions in a timely manner. A DCO must act quickly in the event of a clearing member's default, and ambiguity over the enforceability of its procedures could delay, and possibly prevent altogether, a DCO from taking actions that fulfill its obligations to non-defaulting clearing members or minimize its potential losses.

A critical issue in a DCO's settlement arrangements is the timing of the finality of funds transfers between the DCO's settlement accounts and the accounts of its clearing members. To address this, proposed § 39.27(b)(5) would require the legal framework of a DCO to ensure that its settlement bank arrangements provide that funds transfers are final, *i.e.*, irrevocable and unconditional, when the DCO's accounts are debited and credited.

In circumstances where a DCO crosses borders through linkages, remote clearing members, or the taking of collateral, the rules governing the DCO's activities should clearly indicate the law that is intended to apply to each aspect of a DCO's operations. Potential conflicts of law should be identified and the DCO should address conflict of law issues when there is a difference in the substantive laws of the jurisdictions that have potential interests in a DCO's activities. Proposed § 39.27(c)(1) would require the legal framework of a DCO that provides clearing services outside the United States to identify and address any conflict of law issues and, in entering into cross-border agreements, to specify a choice of law.

Proposed § 39.27(c)(2) would require a DCO to be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures and contracts are enforceable in all relevant jurisdictions. This could be accomplished, for example, by means of a legal opinion.

The Commission solicits comment as to the legal risks addressed in proposed § 39.27 and whether the rule should address additional legal risks.

## III. Technical Amendments

Section 39.3(a) currently requires that an organization applying for DCO registration must "file electronically an application for registration with the Secretary of the Commission at its Washington, DC, headquarters." The Commission is proposing to revise this provision and §§ 39.3(c) (withdrawal of an application for registration) and 39.3(f) (request for vacation of registration) by instructing applicants to file electronically an application for registration with the Secretary in the form and manner provided by the Commission. Given the shift from paper-based to electronic submissions, it is no longer necessary to specify the location of the Secretary. Moreover, because the Commission may modify procedures for electronic submissions from time to time, the proposed rule would not specify filing instructions. The Commission's filing procedures will be posted on its Web site and any further questions can be addressed to the Office of the Secretary.

The Commission also is proposing conforming amendments to paragraphs (a)(1), (c), (e), and (g) of § 39.3, to reflect the deletion of current paragraphs (a)(3) and (b) related to the elimination of the 90-day expedited review period for DCO applications.

In addition, the Commission is proposing amendments to the delegation provision of current paragraph (g), to correct the reference to "delegates," by substituting the word "designee," in reference to action taken by the Director of the Division of Clearing and Intermediary Oversight or the Director's designee with the concurrence of the General Counsel or the General Counsel's designee.

The Commission is proposing to revise § 39.4(c)(2) to remove the reference to accepting for clearing a new product that is not traded on a "derivatives transaction execution facility" and inserting in its place a reference to a "swap execution facility."

## IV. Effective Date

The Commission is proposing that the effective date for the proposed regulations, except those relating to the CCO under proposed § 39.3(c), be 30 days after publication of final rules in the **Federal Register**. The Commission is proposing that the requirements for CCOs become effective not more than 180 days from the date the final rules are published in the **Federal Register**. The Commission believes that this would give DCOs adequate time to implement the CCO regulations which, depending on the DCO, might include hiring a CCO and putting into place a compliance program. The Commission requests comment on whether the proposed effective dates are appropriate and, if not, the Commission further requests comment on possible alternative effective dates and the basis for any such alternative dates.

## V. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA")[48] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The regulations adopted herein will affect DCOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA,[49] and it has previously determined that DCOs are not small entities for the purpose of the RFA.[50] Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act ("PRA")[51] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. 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. OMB has not yet assigned a control number to the new collection.

This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget ("OMB") for review. If adopted, responses to this collection of information would be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, Section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

#### 1. Information Provided by Reporting Entities/Persons

Section 725 of the Dodd-Frank Act and proposed regulations require each

[48] 5 U.S.C. 601 *et seq.*

[49] "Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act," 47 FR 18618 (Apr. 30, 1982).

[50] *See* "A New Regulatory Framework for Clearing Organizations," 66 FR 45604, 45609 (Aug. 29, 2001).

[51] 44 U.S.C. 3501 *et seq.*

respondent to file an annual report with the Commission. Commission staff estimates that each respondent would expend 40–80 hours to prepare each annual report, depending on the size of the DCO. Commission staff estimates that respondents could expend $4,000 to $8,000 annually, based on an hourly cost of $100, to comply with the proposed regulations.

The proposed regulations also require each respondent to retain certain records. Each respondent must retain: (1) A copy of the policies and procedures adopted in furtherance of compliance with the CEA; (2) copies of materials, including written reports provided to the board of directors in connection with the board's review of the annual report; and (3) any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are (a) created, sent or received in connection with the annual report and (b) contain conclusions, opinions, analyses, or financial data related to the annual report. Staff believes the cost of keeping these electronic documents will not exceed more than $1000 annually.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov*. Please provide the Commission with a copy of submitted comments so that they can be summarized and addressed in the final rule. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

*C. Cost-Benefit Analysis*

Section 15(a) of the CEA [52] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Summary of Proposed Requirements

Proposed amendments to part 39 of the Commission's regulations would establish the regulatory standards for compliance with DCO core principles regarding compliance, rule enforcement, antitrust, and legal risk, as well as CCO requirements set forth in Section 5b of the CEA. The proposed amendments to part 39 also would revise procedures for DCO applications, clarify procedures for the transfer of a DCO registration, and add requirements for approval of DCO rules establishing a portfolio margining program for customer accounts carried by an FCM/BD.

Costs

The Commission has determined that the cost to market participants and the public if these rules are not adopted could be substantial. Significantly, without these rules to promote a culture of institutional ethics and compliance, sound risk management and the financial integrity of the futures markets would not be strengthened, to the detriment of market participants and the public. Moreover, competitiveness would be affected without the prohibition against DCO rules and other actions that would result in unreasonable restraints of trade or material, anticompetitive burdens.

Benefits

With respect to benefits, the Commission has determined that the benefits of the proposed rules are many and substantial. DCO registration applications will be processed transparently and efficiently, making clearing services available to the futures and swap markets, in order to protect the integrity of these markets through the sound risk management practices associated with clearing and the efficiency that competition between clearinghouses will foster. The protection of market participants, financial integrity of the markets, and sound risk management will further be promoted by the compliance of each DCO with the rules and standards that are being adopted to implement the core principles, notably those associated with conflicts of interest, portfolio margining, financial safeguards, and legal certainty regarding margin, member defaults, settlement and funds transfers, and conflicts of law.

*Public Comment.* The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

**List of Subjects**

*17 CFR Part 1*

Definitions, Commodity futures, and Swaps.

*17 CFR Part 39*

Definitions, Commodity futures, Reporting and recordkeeping requirements, and Swaps.

In light of the foregoing, the Commission hereby proposes to amend parts 1 and 39 of Title 17 of the Code of Federal Regulations as follows:

[52] 7 U.S.C. 19(a).

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

### Authority and Issuance

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Amend § 1.3 by revising paragraphs (c), (d), and (k), and adding paragraphs (jjj), (kkk), (lll), (mmm), (nnn), and (ooo) to read as follows:

**§ 1.3 Definitions.**

* * * * *

(c) *Clearing member.* This term means any person that has clearing privileges such that it can process, clear and settle trades through a derivatives clearing organization on behalf of itself or others. The derivatives clearing organization need not be organized as a membership organization.

(d) *Clearing organization* or *derivatives clearing organization.* This term means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

(1) Enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(2) Arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(3) Otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(4) Exclusions. The terms *clearing organization* and *derivatives clearing organization* do not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) Settlement, netting, or novation of obligations resulting from agreements, contracts or transactions, on a bilateral basis and without a central counterparty;

(ii) Settlement or netting of cash payments through an interbank payment system; or

(iii) Settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

* * * * *

(k) *Customer; commodity customer; swap customer.* These terms have the same meaning and refer to a customer trading in any commodity named in the definition of commodity herein, or in any swap as defined in section 1a(47) of the Act: *Provided, however,* an owner or holder of a proprietary account as defined in paragraph (y) of this section shall not be deemed to be a customer within the meaning of section 4d of the Act, the regulations that implement sections 4d and 4f of the Act and § 1.35, and such an owner or holder of such a proprietary account shall otherwise be deemed to be a customer within the meaning of the Act and §§ 1.37 and 1.46 and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the Act.

* * * * *

(jjj) *Clearing initial margin.* This term means initial margin posted by a clearing member with a derivatives clearing organization.

(kkk) *Customer initial margin.* This term means initial margin posted by a customer with a futures commission merchant, or by a non-clearing member futures commission merchant with a clearing member.

(lll) *Initial margin.* This term means money, securities, or property posted by a party to a futures, option, or swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

(mmm) *Margin call.* This term means a request from a futures commission merchant to a customer to post customer initial margin; or a request by a derivatives clearing organization to a clearing member to post clearing initial margin or variation margin.

(nnn) *Spread margin.* This term means reduced initial margin that takes into account correlations between certain related positions held in a single account.

(ooo) *Variation margin.* This term means a payment made by a party to a futures, option, or swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

### Authority and Issuance

3. The authority for part 39 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6d, 7a–1,7a–2, and 7b as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

4. Amend § 39.1 by:

a. Redesignating the existing text as paragraph (a);

b. Adding a new heading to newly designated paragraph (a); and

c. Adding a new paragraph (b) to read as follows:

**§ 39.1 Scope and Definitions.**

(a) *Scope.* * * *

(b) *Definitions.* For the purposes of this part,

*Back test* means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

*Compliance policies and procedures* means all policies, procedures, codes, including a code of ethics, safeguards, rules, programs, and internal controls that are required to be adopted or established by a derivatives clearing organization pursuant to the Act, Commission regulations, or orders, or that otherwise facilitate compliance with the Act and Commission regulations.

*Customer account or customer origin* means a clearing member's account held on behalf of customers, as defined in § 1.3(k) of this chapter. A customer account is also a futures account, as that term is defined by § 1.3(vv) of this chapter.

*House account or house origin* means a clearing member's combined proprietary accounts, as defined in § 1.3(y) of this chapter.

*Key personnel* means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations and orders. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

*Stress test* means a test that compares the impact of a potential price move, change in option volatility, or change in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to

determine the adequacy of such financial resources.

*Systemically important derivatives clearing organization* means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act (7 U.S.C. 7a–1), which has been designated by the Financial Stability Oversight Council to be systemically important.

5. Amend § 39.3 by revising paragraph (a)(1), removing paragraph (a)(3), removing and reserving paragraph (b), revising paragraphs (c), (e), (f), and (g)(1), and adding paragraph (h) to read as follows:

**§ 39.3 Procedures for registration.**

(a) * * *

(1) An organization desiring to be registered as a derivatives clearing organization shall file electronically an application for registration with the Secretary of the Commission in the form and manner provided by the Commission. The Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

* * *

(b) [Reserved].

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing electronically such a request with the Secretary of the Commission in the form and manner provided by the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

* * * * *

(e) *Reinstatement of dormant registration.* Before listing or relisting contracts for clearing, a dormant registered derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a) of this section; *provided, however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(f) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under section 7 of the Act by filing electronically such a request with the Secretary of the Commission in the form and manner provided by the Commission. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was registered by the Commission.

(g) * * *

(1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to notify an applicant seeking designation under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed.

* * * * *

(h) *Request for transfer of registration and open interest.* (1) In anticipation of a corporate change that will result in the transfer of all or substantially all of a derivatives clearing organization's assets to another legal entity, the derivatives clearing organization shall submit a request for approval to transfer the derivatives clearing organization's registration and positions comprising open interest for clearing and settlement.

(2) *Timing of submission and other procedural requirements.* (i) The request shall be submitted no later than three months prior to the anticipated corporate change, or as otherwise permitted under § 39.19(c)(4)(x)(C) of this part.

(ii) The derivatives clearing organization shall submit a request for transfer by filing electronically such a request with the Secretary of the Commission in the form and manner provided by the Commission.

(iii) The derivatives clearing organization shall submit a confirmation of change report pursuant to § 39.19(c)(4)(x)(D) of this part.

(3) *Required information.* The request shall include the following:

(i) The underlying agreement that governs the corporate change;

(ii) A narrative description of the corporate change, including the reason for the change and its impact on the derivatives clearing organization's financial resources, governance, and operations, and its impact on the rights and obligations of clearing members and market participants holding the positions that comprise the derivatives clearing organization's open interest;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations thereunder;

(iv) The governing documents of the transferee, including but not limited to articles of incorporation and bylaws;

(v) The transferee's rules marked to show changes from the current rules of the derivatives clearing organization;

(vi) A list of contracts, agreements, transactions or swaps for which the DCO requests transfer of open interest;

(vii) A representation by the derivatives clearing organization that it is in compliance with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations thereunder; and

(viii) A representation by the transferee that it understands that the derivatives clearing organization is a regulated entity that must comply with the Act, including the core principles applicable to derivatives clearing organizations, and the Commission's regulations thereunder, in order to maintain its registration as a derivatives clearing organization; *and further,* that the transferee will continue to comply with all self-regulatory requirements applicable to a derivatives clearing organization under the Act and the Commission's regulations thereunder.

(4) *Commission determination.* The Commission will review a request as soon as practicable, and based on the Commission's determination as to the transferee's ability to continue to operate the DCO in compliance with the Act and the Commission's regulations thereunder, such request will be approved or denied pursuant to a Commission order.

6. Amend § 39.4 by revising paragraph (c)(2) and adding paragraph (e) to read as follows:

**§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.**

* * * * *

(c) * * *

(2) *Acceptance of certain new products for clearing.* A derivatives clearing organization that accepts for clearing a new product that is not traded on a designated contract market or a registered swap execution facility must submit to the Commission any rules establishing the terms and conditions of the product that make it acceptable for clearing with a certification that the clearing of the product and the rules and terms and conditions comply with the Act and the rules thereunder

pursuant to the procedures of § 40.2 of this chapter.

* * * * *

(e) *Holding securities in a futures portfolio margining account.* A derivatives clearing organization seeking to provide a portfolio margining program under which securities would be held in a futures account as defined in § 1.3(vv) of this chapter, shall submit rules to implement such portfolio margining program for Commission approval in accordance with § 40.5 of this chapter. Concurrent with the submission of such rules for Commission approval, the derivatives clearing organization shall petition the Commission for an order under section 4d of the Act.

7. Add § 39.10 to read as follows:

**§ 39.10 Compliance with Core Principles.**

(a) To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle set forth in section 5b(c)(2) of the Act and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act; and

(b) Subject to any rule or regulation prescribed by the Commission, a registered derivatives clearing organization shall have reasonable discretion in establishing the manner by which it complies with each core principle.

(c) *Chief Compliance Officer.* (1) *Designation.* Each derivatives clearing organization shall establish the position of chief compliance officer, designate an individual to serve as the chief compliance officer, and provide the chief compliance officer with the full responsibility and authority to develop and enforce, in consultation with the board of directors or the senior officer, appropriate compliance policies and procedures, as defined in § 39.1(b), to fulfill the duties set forth in the Act and Commission regulations.

(i) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual who would be disqualified from registration under sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(ii) The chief compliance officer shall report to the board of directors or the senior officer of the derivatives clearing organization. The board of directors or the senior officer shall approve the compensation of the chief compliance officer.

(iii) The chief compliance officer shall meet with the board of directors or the senior officer at least once a year to discuss the effectiveness of the compliance policies and procedures, as well as the administration of those policies and procedures by the chief compliance officer.

(iv) A change in the designation of the individual serving as the chief compliance officer of the derivatives clearing organization shall be reported to the Commission in accordance with the requirements of § 39.19(c)(4)(xi) of this part.

(2) *Chief Compliance Officer Duties.* The chief compliance officer's duties shall include, but are not limited to:

(i) Reviewing the derivatives clearing organization's compliance with the core principles set forth in section 5b of the Act (7 U.S.C. 7a–1), and the Commission's regulations thereunder;

(ii) In consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise;

(iii) Administering each policy and procedure that is required under section 5b of the Act (7 U.S.C. 7a–1);

(iv) Ensuring compliance with the Act and Commission regulations relating to agreements, contracts. or transactions, and with Commission regulations prescribed under section 5b of the Act (7 U.S.C. 7a–1);

(v) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(vi) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; and

(vii) Establishing a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a code of ethics designed to prevent ethical violations and to promote ethical conduct.

(3) *Annual report.* The chief compliance officer shall, not less than annually, prepare and sign a written report that covers the most recently completed fiscal year of the derivatives clearing organization, and provide the annual report to the board of directors or the senior officer. The annual report shall, at a minimum:

(i) Contain a description of the derivatives clearing organization's compliance with respect to the Act and Commission regulations, and each of the derivative clearing organization's compliance policies and procedures, including the code of ethics and conflict of interest policies;

(ii) Review each core principle, and with respect to each:

(A) Identify the compliance policies and procedures that ensure compliance with the core principle;

(B) Provide an assessment as to the effectiveness of these policies and procedures;

(C) Discuss areas for improvement, and recommend potential or prospective changes or improvements to the DCO's compliance program and resources allocated to compliance;

(iii) List any material changes to compliance policies and procedures since the last annual report;

(iv) Describe the financial, managerial, and operational resources set aside for compliance with the Act and Commission regulations;

(v) Describe any material compliance matters, including incidents of noncompliance, since the date of the last annual report and describe the corresponding action taken; and

(vi) Delineate the roles and responsibilities of the DCO's board of directors, relevant board committees, and staff in addressing any conflict of interest, including any necessary coordination with, or notification of, other entities, including regulators.

(4) *Submission of Annual Report to the Commission.* (i) Prior to submitting the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the derivatives clearing organization for review. Submission of the report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

(ii) The annual report shall be submitted electronically to the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year, concurrently with submission of the fiscal year-end audited financial statement that is required to be furnished to the Commission pursuant to § 39.19(c)(3)(ii) of this part. The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual report is accurate and complete.

(iii) The derivatives clearing organization shall promptly submit an amended annual report if material errors or omissions in the report are identified after submission. An amendment must contain the certification required under subparagraph (c)(4)(ii) of this section.

(iv) A derivatives clearing organization may request from the Commission an extension of time to

submit its annual report in accordance with § 39.19(c)(3) of this part.

(5) *Recordkeeping.* (i) The derivatives clearing organization shall maintain:

(A) A copy of the compliance policies and procedures, as defined in § 39.1(b), and all other policies and procedures adopted in furtherance of compliance with the Act and Commission regulations;

(B) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (c)(4)(i) of this section; and

(C) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent, or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(ii) The derivatives clearing organization shall maintain records in accordance with § 1.31 of this chapter and § 39.20 of this part.

8. Add § 39.17 to read as follows:

**§ 39.17 Rule enforcement requirements.**

(a) *In general.* Each derivatives clearing organization shall: (1) Maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization and the resolution of disputes;

(2) Have the authority and ability to discipline, limit, suspend, or terminate the activities of a clearing member due to a violation by the clearing member of any rule of the derivatives clearing organization; and

(3) Report to the Commission regarding rule enforcement activities and sanctions imposed against clearing members as provided in paragraph (a)(2) of this section, in accordance with § 39.19(c)(4)(xiii) of this part.

(b) *Authority to enforce rules.* The board of directors of the derivatives clearing organization may delegate responsibility for compliance with the requirements of paragraph (a) of this section to the Risk Management Committee, unless the responsibilities are otherwise required to be carried out by the chief compliance officer pursuant to the Act or this part.

9. Add § 39.23 to read as follows:

**§ 39.23 Antitrust considerations.**

Unless necessary or appropriate to achieve the purposes of the Act, a derivatives clearing organization shall not adopt any rule or take any action that results in any unreasonable restraint of trade, or impose any material anticompetitive burden.

10. Add § 39.27 to read as follows:

**§ 39.27 Legal risk considerations.**

(a) *Legal Authorization.* A derivatives clearing organization shall be duly organized, legally authorized to conduct business, and remain in good standing at all times in the relevant jurisdictions. If the derivatives clearing organization provides clearing services outside the United States, it shall be duly organized to conduct business and remain in good standing at all times in the relevant jurisdictions, and be authorized by the appropriate foreign licensing authority.

(b) *Legal framework.* A derivatives clearing organization shall operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of the derivatives clearing organization. As applicable, the framework shall provide for:

(1) The derivatives clearing organization to act as a counterparty, including novation;

(2) Netting arrangements;

(3) The derivatives clearing organization's interest in collateral;

(4) The steps that a derivatives clearing organization would take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (when a derivatives clearing organization's accounts are debited and credited); and

(6) Other significant aspects of the derivatives clearing organization's operations, risk management procedures, and related requirements.

(c) *Conflict of Laws.* If a derivatives clearing organization provides clearing services outside the United States:

(1) The derivatives clearing organization shall identify and address any conflict of law issues. The derivatives clearing organization's contractual agreements shall specify a choice of law.

(2) The derivatives clearing organization shall be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.

Issued in Washington, DC, on December 1, 2010 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

## Appendices to General Regulations and Derivatives Clearing Organizations—Commission Voting Summary and Statement of Chairman Gary Gensler

**Note:** The following appendices will not appear in the Code of Federal Regulations.

### Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule on legal and compliance matters for clearinghouses, which would revise procedures for derivatives clearing organization (DCO) applications, clarify procedures for the transfer of a DCO registration and add requirements for approval of DCO rules for portfolio margining of futures and securities in a futures account.

The rule is intended to ensure that sufficient resources are devoted to compliance with laws and regulations, which is a core component of sound risk management practices. It would fulfill the Dodd-Frank Act's requirement that each DCO have a chief compliance officer who is responsible for establishing and administering compliance policies, as well as resolving certain conflicts of interest.

Finally, the proposed rulemaking would implement DCO Core Principles for compliance, rule enforcement, antitrust consideration and legal risk, which would promote compliance with the CEA and would enhance the integrity of the clearing and settlement process.

[FR Doc. 2010–31029 Filed 12–10–10; 8:45 am]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 30**

**RIN 3038–AC54**

## Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index; Commission Certification Procedures

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Currently, a security index futures contract traded on, or subject to the rules of, a foreign board of trade may be offered or sold to persons located within the United States pursuant to a

staff no-action letter confirming that the contract satisfies the requirements enumerated in Section 2(a)(1)(C)(ii) of the Commodity Exchange Act (the "CEA" or "Act"). The Commodity Futures Trading Commission ("Commission") is hereby proposing new requirements which would establish a Commission certification procedure applicable to the offer or sale, to persons in the U.S., of a security index futures contract traded on a foreign board of trade; the new certification procedure will replace the existing staff no-action process.

Additionally, this proposed rule would establish a procedure for a foreign board of trade to request and receive a Commission certification on an expedited basis. Under this expedited procedure, a security index futures contract of qualifying foreign boards of trade could be offered or sold in the U.S. forty-five (45) days after submission of such request, absent a contrary action (or an extension of time) by the Commission.

**DATES:** Comments must be received on or before January 12, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.Regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established in § 145.9 of the Commission's regulations, 7 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Hardman, Deputy General Counsel (Regulation), (202) 418–5120, *hhardman@cftc.gov;* Carlene S. Kim, Assistant General Counsel, (202) 418–5613, *ckim@cftc.gov,* Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Commission has exclusive jurisdiction with respect to the offer or sale in the U.S. of futures contracts based on a certain group or index of securities,[1] including those contracts traded on or subject to the rules of a foreign board of trade.[2] Such offer or sale must comply with Section 2(a)(1)(C)(iv) of the Act,[3] which prohibits the offer or sale of a security index contract, except as permitted under Section 2(a)(1)(C)(ii) or Section 2(a)(1)(D).[4]

Section 2(a)(1)(C)(ii) sets forth three criteria that govern the trading of a security index futures contract on a designated contract market ("DCM") and a registered derivatives transaction execution facility ("DTEF") under the Commission's exclusive jurisdiction. Specifically, Section 2(a)(1)(C)(ii) provides that no DCM or DTEF may trade a security index futures contract unless it demonstrates that: (i) The contract provides for cash settlement; (ii) the contract is not readily susceptible to manipulation or to being used to manipulate any underlying security; and (iii) the group or index of securities is not a "narrow-based security index," as defined in the Act.[5]

While Section 2(a)(1)(C)(ii) provides that no security index futures contract may trade on a U.S. exchange unless it meets the three criteria noted above, it does not explicitly address the standards to be applied to a security index futures contract that is traded on a foreign board of trade. CFTC staff, however, has applied those same three criteria in evaluating requests by a foreign board of trade with regard to the offer or sale of their security index futures contract within the U.S. when the foreign board of trade does not seek designation as a contract market or registration as a DTEF to trade those contracts. In adopting this approach, the staff has been guided by the legislative history relating to Section 2(a)(1)(C)(ii) and Section 4(b).[6] Of particular relevance are statements by the House Committee on Agriculture addressing the listing criteria of new Section 2(a)(1)(C) and their application to a security index futures contract traded on a foreign board of trade.[7]

As the House Committee explained, new Section 4(b) expressly empowers

---

[1] Such a contract also is referred to herein as "non-narrow-based security index futures contract" or "broad-based security index futures contract." The proposed rule does not apply to foreign exchange-traded security futures products, including futures or futures options on narrow-based security indices, as defined in Section 1a(25) of the CEA.

[2] *See* 7 U.S.C. 2(a)(1)(C)(ii); 63 FR 38537 (July 17, 1998). However, the Commission shares jurisdiction with the Securities and Exchange Commission over security futures products. Securities futures products are defined as a security future or any put, call, straddle, option, or privilege on any security future. *See* Section 1a(32). A security future is defined as a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, with certain exceptions. *See* Section 1a(31) of the CEA.

[3] 7 U.S.C 2(a)(1)(C)(iv). By its terms, Section 2(a)(1)(C)(iv) applies to security index futures contracts traded on both domestic and foreign boards of trade.

[4] 7 U.S.C. 2(a)(1)(D) (governs the offer and sale of security futures products). Foreign security futures contracts generally may not be offered or sold to customers located in the U.S. until the Commission and the U.S. Securities and Exchange Commission adopt rules governing the offer and sale of such products. *See* 7 U.S.C. 2(a)(1)(E) and 2(a)(1)(F). The SEC has issued an order permitting certain U.S. persons, consisting primarily of qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933, to purchase and sell foreign security futures contracts, subject to certain conditions. *See* 74 FR 32200 (July 7, 2009).

[5] The first two criteria under CEA Section 2(a)(1)(C)(ii) were unchanged by the Commodity Futures Modernization Act of 2000. With regard to the third criterion, an index is a "narrow-based security index" under both the CEA and the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78a *et seq.*, if it has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities in the aggregate comprise more than 60% of the index's weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting, have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). *See* CEA Section 1a(25)(A)(i)–(iv); Exchange Act Section 3(a)(55)(B)(i)–(iv). Thus, an index is not a narrow-based security index for purposes of CEA Section 2(a)(1)(C)(ii) unless it has one of these elements. *See also* CEA Section 1a(25)(B); Exchange Act Section 3(a)(55)(C).

[6] The Futures Trading Act of 1982 added Section 2(a)(1)(B) and Section 4(b) to the Act (Section 2(a)(1)(B), as amended in 2000, is now Section 2(a)(1)(C)). *See* Pub. L. 97–444, 96 Stat. 2294.

[7] H.R. Rep. No. 565, Part 1, 97th Cong., 2d Sess. (1982) ("House Report").

the Commission to protect U.S. persons against fraudulent or other harmful practices in the offer or sale of foreign futures contracts. It does not, however, authorize the Commission to "regulate the internal affairs of a foreign board of trade * * * or require Commission approval of any action of any such market * * *"[8] Nevertheless, where the Act establishes minimum requirements for a contract, the Committee stated that "nothing in the provisions prevents a foreign board of trade from applying to the Commission that its contract conforms with the requirements of this Act."[9] Thus, Congress understood that a foreign exchange might lawfully offer or sell futures contracts on security indexes within the United States, without having to become designated as a DCM or registered as a DTEF. In doing so, the foreign board of trade may seek assurance from the Commission that its futures contract meets the statutory criteria enumerated in Section 2(a)(1)(C)(ii).[10]

The Commission did not adopt a certification procedure for either domestic- or foreign-based security index contracts offered on a foreign board of trade. Instead, foreign boards of trade have been granted confirmation with respect to their broad-based security index futures contracts pursuant to a no-action process, under which the Commission staff has applied the same criteria to evaluate a security index futures contract.[11]

The factors that are considered by the staff in evaluating a request for a no-action letter by a foreign board of trade with respect to its security index futures contract, and the information that the board should submit in its request, are set forth in Appendix D to Part 30 of the Commission's regulations. Among other things, the staff considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and other relevant factors. Another factor that the staff considers with respect to the issue of whether a foreign futures contract based on a security index is not readily susceptible to manipulation or being used to manipulate any underlying security, one preliminary consideration is the requesting board's ability to access and share information regarding the securities underlying the index.[12]

The scope of the no-action relief is product-specific, is restricted to the subject futures contracts, is based upon the facts and representation thereto, and requires the foreign board of trade to notify OGC staff if the facts underlying the request materially change.[13] Accordingly, a foreign board of trade with prior no-action relief with respect to a particular foreign non-narrow-based security index futures contract must file a new request for no-action relief for each new non-narrow-based security index futures contract it seeks to offer or sell in the United States.

## II. Proposed Rule 30.13: Commission Certification Procedure

The proposed § 30.13 would establish a Commission certification process for confirming that the security index futures contract traded on a foreign board of trade meets the requirements of the Act and therefore, may lawfully be offered or sold within the U.S. In this respect, the new certification process would be consistent with the original congressional guidance on this topic. In addition, a Commission certification would provide a greater degree of assurance to foreign boards of trade seeking to make available their security index futures contracts offered or sold in the U.S., in comparison to a staff no-action letter, which only represents the views of the issuing staff.

Specifically, § 30.13 would set forth a procedure whereby a foreign board of trade may apply to the Commission for certification that a security index futures contract traded on that board conforms to the criteria enumerated in Section 2(a)(1)(C)(ii) of the Act. The Commission certification procedure would be available to futures contracts based on an index of foreign or U.S. securities.[14] Under the proposed procedure, the foreign board of trade must file with the Commission a written submission requesting certification with respect to their security index futures contract(s). Such submission must include data, information, facts, and statements complying with the form and content requirements set forth in Appendix D to Part 30, as amended.[15] Such data, information, facts, and statements will be the same as that specified in current Appendix D to Part 30. In addition to the information, statements and data specified in Appendix D,[16] the foreign board of trade also would be required to provide a written certification that the subject

[8] *Id.*

[9] *Id.*

[10] *Id.* Specifically, the House Committee stated that a foreign board of trade may seek certification from the Commission that a futures contract offered by it that is based upon a group or index of American securities meets the minimum requirements specified in subparagraphs (a) through (c) of section 2(a)(1)(B)(ii) [now known as section 2(a)(1)(C)(ii)] of the Act, without seeking or obtaining designation by the Commission as a contract market. With regard to a futures contract on an index comprised of foreign securities only, the House Committee stated that such contract "could be certified by the Commission under such criteria as the Commission may deem appropriate." Thus, the Committee made a distinction between contracts on indexes on U.S. securities from indexes on foreign securities.

[11] A no-action letter is a written statement issued by the staff of a Division of the Commission or of OGC that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction or activity is conducted. A no-action letter binds only the issuing division or OGC, as applicable, not the Commission or other Commission staff. See 17 CFR 140.99.

[12] In general, OGC staff has requested that the foreign board of trade provide a copy of the surveillance agreements between the board of trade and the exchange(s) on which the underlying securities are traded; assurances that the board of trade will share information with the Commission, directly or indirectly; and when applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information regarding the trading of such contracts. The staff reviews this information to ensure that the requesting foreign board of trade (and/or its regulator) has the ability and willingness to access adequate surveillance data necessary to detect and deter manipulation in the futures contracts and underlying security, as well as share such data with the Commission.

To date, OGC has issued 114 no-action letters involving 25 foreign boards of trade. A complete list of these no-action letters can be found on the Commission Web site: *http://services.cftc.gov/SIRT/SIRT.aspx?Topic=ForeignOrganizationProducts&implicit=true&type=DCM&status=No-Action%20Letter%20Issued&CustomColumnDisplay=TTTTTTTT.*

[13] The no-action letter does not affect or alter the application of Part 30 of the Commission regulations, which governs the offer and sale by financial intermediaries of foreign futures and foreign option contracts to persons located in the United States.

[14] *See*, e.g., CFTC Staff Letter No. 06–22 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,366 (Sept. 26, 2006) (no-action relief granted with respect to futures contracts based on the Hang Seng Index and the Hang Seng China Enterprises Index, both of which are indices comprised wholly of foreign securities); CFTC Staff Letter No. 02–81 [2002–2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,094 (June 28, 2002) (no-action relief granted with respect to futures contracts based on the Dow Jones Global Titan Index, which is an index comprised partially of U.S. securities). *See also* House Report, supra note 10.

[15] Appendix D to Part 30 will be amended in connection with the adoption of Rule 30.13. Specifically, Appendix D will be revised to retain only the information requirements currently set forth in paragraph G of Appendix D.

[16] Accordingly, the information required to be submitted would include: a copy of the contract's terms and conditions; relevant rules that may have an effect on trading of the contract such as circuit breakers or position limits or other controls on trading; information and data relating to the index, including the design, computation and maintenance thereof. In addition, the foreign board of trade would be required to provide a copy of the surveillance agreement(s) between the foreign board of trade and the exchange on which the underlying securities are traded and provide assurance of its ability and willingness to share information with the Commission.

contract conforms to Section 2(a)(1)(C)(ii) of the Act. Finally, the foreign board of trade would be required to describe the manner in which U.S. persons legally may access these products on that board of trade (*e.g.*, access through omnibus accounts, through an intermediary, which is registered in the U.S. and also is an authorized member of the foreign board of trade, or through an entity that has relief from registration under part 30).[17]

The substantive review would remain the same under the new § 30.13 as it is under the current no-action process. Further, consistent with the existing staff no-action review process, the Commission's review of the subject contract would not be subject to any specific time frame, except as noted below. If a contract is determined to conform to the applicable requirements of the Act, the Commission will so notify the foreign board of trade.[18]

Finally, OGC no-action letters respecting foreign non-narrow-based security index futures contracts issued prior to the effective date of new § 30.13 would be grandfathered, provided that underlying conditions continue to be met.[19] Accordingly, a foreign board of trade that has received from Commission staff such a no-action letter would not be required to obtain Commission relief (for the contract that is the subject of that letter) under this proposed rule, if adopted.

## III. Expedited Review for Qualifying Foreign Boards of Trade

### A. Eurex's Petition for Expedited Review

Eurex Deutschland ("Eurex") petitioned the Commission to establish a fast-track procedure for Commission review of requests by a foreign board of trade to offer or sell foreign security index futures contracts traded on that board to persons located in the United States.[20] Specifically, Eurex seeks a new rule, or in the alternative, an amendment to Appendix D to Part 30, which would establish an expedited procedure for the consideration of whether a foreign security index futures contract that a foreign board of trade lists for trading, or plans to list for trading, meets the requirements enumerated in Section 2(a)(1)(C)(ii) of the Act. Eurex proposes that the expedited review be available to a foreign board of trade that has received either: (i) A prior OGC no-action letter with respect to the offer or sale of a foreign futures contract on a security index or (ii) a prior DMO no-action letter permitting the foreign board of trade to provide direct electronic access to persons in the U.S. This expedited procedure requested would be an alternative, or an addition, to the existing staff no-action procedure, which has no explicit time-frame.

### B. Under Eurex's proposal, a foreign security index futures contract would be deemed to conform to Section 2(a)(1)(C)(ii) of the Act, and therefore may be offered or sold to persons located in the U.S., forty-five (45) days after filing with the Commission, unless the Commission determines that an additional forty-five day extension is necessary to address complex or novel issues. The information that a foreign board of trade must submit under the expedited procedure would be identical to the information required under the current no-action process as prescribed in Appendix D to Part 30.

### Proposed Expedited Review

In light of the Eurex Petition and the staff's experience with the process governing the offer and sale in the U.S. of foreign non-narrow based security index futures contracts traded on a foreign board of trade, the Commission is proposing to establish an expedited review procedure available to qualifying foreign boards of trade.[21] As further described below, the proposed expedited review process generally conforms to the Commission's process for prior-approval review of contracts to be listed and traded on domestic contract markets. This expedited procedure would be an alternative to the regular review procedure described in Section II herein.

The expedited review would be available to a foreign board of trade that has previously been granted no-action relief by OGC, or Commission certification, with respect to a non-narrow-based security index futures contract traded on that board.[22] In connection with the grant of such prior relief or certification, the staff will have worked closely with the foreign board of trade and its regulators, and as a result of having obtained prior relief or certification, both the board and the regulators will be familiar with the substantive and procedural requirements that must be met to obtain Commission certification, as they are the same as what is required for obtaining an OGC no-action letter. Moreover, in connection with prior relief or certification, the board of trade will have confirmed that it is willing and able to share with the Commission information concerning the subject contract and the securities underlying the index. Under these circumstances, and provided that the board of trade has been in compliance with the terms and conditions of the prior no-action letter(s), the Commission believes that subsequent requests for certification from such foreign boards of trade with regard to the offer or sale of new broad-based foreign security index futures contracts in the U.S. should be considered on an expedited basis.

The expedited review also would be available to a foreign board of trade that has received, and is compliant with the requirements of, DMO's Foreign Trading System No-Action Letter.[23] The Commission believes that an expedited review is appropriate for such boards in light of the fact that the Commission staff will have already had conducted a comprehensive review of the foreign board of trade. Pursuant to such review, the staff will have determined that the foreign board of trade is a bona fide board of trade subject to a bona fide regulatory regime, including appropriate mechanisms for market oversight and customer protection, and that enabling

---

[17] While an index product may meet the statutory standard and is therefore eligible to be offered or sold in the U.S., U.S. customers' access to such product may be restricted due to legal restrictions in the subject foreign jurisdiction.

[18] Additionally, once the Commission has certified the subject futures contracts, no further action is required by the Commission or staff in order for options on such futures contract to be offered and sold in the United States. *See* 61 FR 10891 (March 18, 1996).

[19] The Commission staff previously determined that such non-narrow-based foreign index contracts conformed to Section 2(a)(1)(C)(ii) of the Act. Given that the substance of the review under the proposed Commission certification process would remain unchanged, the Commission believes it would be appropriate to "grandfather" these contracts.

[20] *See* Letter from Paul M. Architzel, Alston & Bird, LLP, to David Stawick, Secretary, Commodity Futures Trading Commission (March 28, 2008). A copy of the petition (hereinafter referred to as "Eurex Petition") is available through the Commission's Office of the Secretariat. To inquire with the Office of the Secretariat send an e-mail to *secretary@cftc.gov*.

[21] Under this expedited process, a FBOT would be required to submit information that is substantively similar to that required under the full, non-expedited process, including a description of the manner in which U.S. persons may trade the subject products on the board.

[22] Prospectively, following the adoption of new Rule 30.13, a foreign board of trade that has previously been granted Commission certification with respect to a foreign security index futures contract would also be eligible for a fast-track review.

[23] Since 1996, the Commission staff has issued no-action letters to foreign boards of trade stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a DCM or registration as a DTEF ("Foreign Trading System No-Action Letters").

U.S. persons to have direct trading access to that board would not be contrary to the public interest.[24] In connection with such relief, the staff also will have considered the existence of adequate information-sharing mechanism to ensure the Commission's ability to carry out its surveillance responsibilities. Under these circumstances, the Commission believes that such foreign board of trade will have demonstrated its ability to comply with the substantive and procedural requirements for Commission certification. Accordingly, the Commission believes that a foreign board of trade that is the subject of an existing Foreign Trading System No-Action Letter should be eligible for an expedited review, provided that the board of trade remains in full compliance with the terms and conditions of the letter. The Commission also notes that the recently-enacted Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Commission to register foreign boards of trade that provide U.S, persons with "direct access" to their trading systems.[25] The Commission anticipates that at such time as the Commission may promulgate such registration requirements, the expedited review procedure would be extended to recipients of an FBOT registration license.

Under the proposed expedited review procedure, a qualifying foreign board of trade may request that the Commission make its certification as to whether a futures contract on a security index that it lists for trading or plans to list for trading on that board satisfies the requirements enumerated in Section 2(a)(1)(C)(ii) of the Act within 45 days after the submission of such request. As proposed, the review period could be extended by the Commission for an additional 45 days if the foreign security index futures contract raises novel or complex issues that require additional time for review, or if the foreign board of trade requests an extension of time.

If the foreign board of trade's request to the Commission for expedited consideration does not comply in form or content with the requirements of proposed Rule 30.13, the Commission may notify the requesting foreign board of trade and treat the request for expedited review as withdrawn. However, the foreign board of trade would not be precluded from filing a new expedited request, provided that such submission satisfies the content and form requirements applicable to such process specified in § 30.13.

Unless the Commission notifies the foreign board of trade that the request has been deemed withdrawn, the subject contract will be deemed to be in conformance with the requirements of Section 2(a)(1)(C)(ii) and, therefore may be offered or sold within the U.S., at the expiration of the applicable review period. In contrast to the regular, non-expedited review, the Commission will not issue a certification letter to the foreign board of trade upon completion of its review.

If the Commission will not, or is unable to, deem that the foreign security index futures contract or the underlying security index conforms to the requirements of the Act, it would so notify the foreign board of trade within the 45 day time period or such extended time frame, with a brief statement of the reasons therefore. Upon such notification, the foreign board of trade's request for Commission certification will be treated as having been withdrawn. The foreign board of trade, however, would not be precluded from filing a new submission, provided that such submission sufficiently addresses the deficiencies or issues identified in the Commission notification.[26] The new streamlined process is intended to reduce the time frame within which a foreign board of trade can request, and obtain, Commission certification with respect to the qualification of its broad-based security index futures contracts prior to the offer or sale to persons located in the U.S. In addition, by affixing a definite timeline to the review process, it would provide foreign boards of trade with greater certainty concerning the time necessary to obtain regulatory clearance in order to market its broad-based security index products within the U.S. Further, because the substantive review would remain the same under the expedited procedure as is under the regular procedure, the new expedited review process would not curtail, or in any way compromise, the regulatory safeguards protecting the public and market users.

## IV. Related Matters

### *A. Cost Benefit Analysis*

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, Section 15(a) requires the Commission to consider the cost and benefits of the subject regulations. Section 15(a) further specifies that the costs and benefits of new regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has determined that there are no apparent costs associated with proposed § 30.13. The proposed rule would codify and streamline the current review process, without substantive changes to the review standards and information required to be filed with respect to a broad-based security index. Accordingly, the Commission believes that the proposed review procedures would not compromise customer protection safeguards provided by the Act or in any way be contrary to the public interest. Additionally, foreign boards of trade and U.S. market participants will benefit from proposed § 30.13. The certification process being proposed will provide a foreign board of trade with greater certainty with respect to the contracts it offers in the U.S., which until now have only been subject to staff no-action relief that is not binding on the Commission. Moreover, the

[24] In the foreign direct access no-action context, the Commission staff reviews information and representations provided by the foreign board of trade that relate to, among other things, the rules and structure of the applicant (with an emphasis on the exchange's financial integrity, market surveillance, trade practice and rule enforcement regime), various system integrity protections that govern the foreign board of trade's electronic trading system, the system's related clearing and customer default protections, and information concerning the regulatory structure in the applicant's jurisdiction, with a specific emphasis on market regulation. *See* 71 FR 64443 (Nov. 2, 2006) (describing the staff review in connection with the issuance of foreign direct access no-action letters).

[25] Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law 111–203, 124 Stat. 1376 (2010).

[26] Requests for staff no-action letters respecting foreign security index futures contracts that are currently pending or submitted prior to adoption of a final rule would be considered as a request for Commission certification following the adoption of § 30.13. Any foreign board of trade eligible for expedited review under any final rule adopted by the Commission would have to submit a request for such treatment.

proposed expedited review process would enhance market efficiency by providing foreign boards of trade with greater certainty concerning the time necessary to obtain regulatory clearance in order to market broad-based security index products within the United States. Finally, streamlining the review process would make additional hedging instruments available to U.S. persons without unnecessary delay, and in turn, may foster price discovery in the futures market.

*B. The Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires that agencies consider the impact of their regulations on small businesses. The Commission has previously determined that designated contract markets are not small entities for purposes of the RFA.[27] The Commission's determination was based on considerations relating to the central role played by contract markets in the futures market, as well as the high volume of transactions conducted on such markets.

To the extent that the RFA may apply to the action proposed to be taken herein, the Commission does not believe that a foreign board of trade falls within the definition of "small entity" for purposes of the RFA. Rather, the Commission is of the view that the rationale that guided its finding with respect to U.S. contract markets apply equally to foreign boards of trade. Moreover, with regard to foreign firms, the RFA defines a "small entity" as a "business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or uses American products, materials or labor."[28] A foreign board of trade that may seek Commission certification pursuant to the proposed rule is not likely to meet such criteria. The Commission is soliciting comments on this matter.

*C. Paperwork Reduction Act*

When publicizing proposed regulations, the Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The information collection requirements associated with the proposed regulations are administered under Office of Management and Budget control numbers 3038–0022 and 3038–0054. These proposed amendments to parts 30 of the Commission's regulations would not impose any new or additional recordkeeping or information collection requirement that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq. Accordingly, the PRA is inapplicable.

**List of Subjects in 17 CFR Part 30**

Foreign board of trade, Foreign security index futures, Designated contract market, Derivatives transaction execution facility, Advertising, No-action letter, Fast-track, Non-narrow foreign security index future, Reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

**Authority:** 17 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.13 is added to read as follows:

**§ 30.13 Commission certification.**

With respect to foreign futures and options contracts on a non-narrow-based security index:

(a) *Request for Certification.* A foreign board of trade may request that the Commission certify that a futures contract on a non-narrow-based security index that trades, or is proposed to be traded thereon, conforms to the requirements of Section 2(a)(1)(C)(ii) of this Act and therefore, that futures contract may be offered or sold to persons located within the United States in accordance with Section 2(a)(1)(C)(iv) of this Act. A submission requesting such certification must:

(1) Be filed electronically with the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in appendix D to part 30 of this chapter;

(3) Include the following information in English:

(i) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the foreign board of trade on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(ii) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(iii) Assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly;

(iv) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States Government agencies to obtain information concerning the trading of such contracts;

(v) Information and data denoted in U.S. dollars where appropriate (and the conversion date and rate used) relating to:

(A) The method of computation, availability, and timeliness of the index;

(B) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(C) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(D) Method of calculation of the cash-settlement price and the timing of its public release;

(E) Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to § 41.11 of this chapter; and

(vi) A written statement that the contract conforms to the criteria enumerated in Section 2(a)(1)(c)((ii) of the Act, including:

(A) A statement that the contract is cash-settled;

(B) An explanation of why the contract is not readily subject to manipulation or to be used to manipulate the underlying security;

(C) A statement that the index is not a narrow-based security index as defined in Section 1a(25) of the Act and the analysis supporting that statement;

(vii) A written representation that the foreign board of trade will notify the

[27] *See* 47 FR 18618 (April 30, 1982).

[28] *See* 5 U.S.C. 601(6) (defining "small entity" to have the same term as the term "small business" as used under section 3 of the Small Business Act, 13 CFR 121.201).

Commission of any material changes in any of the above information;

(viii) When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, a Commission staff no-action letter stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a designated contract market or registration as a derivatives transaction execution facility ("Foreign Trading System No-Action Letter") and a certification from the foreign board of trade that it is in compliance with the terms and conditions of that no-action letter; and

(xii) An explanation of the means by which U.S. persons may access these products on the foreign board of trade.

(b) *Termination of Review.* The Commission, at any time during its review, may notify the requesting foreign board of trade that it is terminating its review under this section if it appears to the Commission that the submission is materially incomplete or fails in form or content to meet the requirements of this section.

(1) Such termination shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(2) The Commission shall also terminate review under this section if requested in writing to do so by the foreign board of trade.

(c) *Notice of Denial of Certification.* The Commission, at any time during its review under paragraph (a) of this section, may notify the requesting foreign board of trade that it has determined that the security index futures contract or underlying index does not conform with the requirements of Section 2(a)(1)(C)(ii) of the Act.

(1) This notification will briefly specify the nature of the issues raised and the specific requirement of Subsections 2(a)(1)(C)(ii)(I)–(III) of the Act with which the security index futures contract does not conform or to which it appears not to conform or the conformance to which cannot be ascertained from the submission.

(2) Such notification shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(d) *Notice of Certification.* Upon review, if the Commission determines that the futures contract and the underlying index meet the requirements enumerated in Section 2(a)(1)(C)(ii), the Commission will issue a letter to the foreign board of trade certifying that the security index contract traded on that board conforms to the requirements of Section 2(a)(1)(C)(ii) of the Act and therefore, that futures contract may be offered or sold to persons located within the U.S. in accordance with Section 2(a)(1)(C)(iv) of the Act and, if applicable, may be made available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, the Foreign Trading System No-Action Letter.

(e) *Expedited Review.* A foreign board of trade may request an expedited Commission review and determination of whether a futures contract on a security index that trades, or is proposed to be traded thereon, conforms to the requirements of Section 2(a)(1)(C)(ii) of the Act and therefore, may be offered or sold to persons in the U.S. under Section 2(a)(1)(C)(iv) of the Act. A submission requesting such expedited consideration should be filed in English with the Commission and should include: Information, statements and data complying with the form and content requirements in paragraph (a) of this section.

(f) *Eligibility for Expedited Review.* In order to qualify for expedited review under paragraph (e) of this section, the foreign board of trade must either:

(1) Have previously requested, and received, at least one no-action letter from the Office of General Counsel or Commission certification regarding a non-narrow based security index futures contract traded on that foreign board of trade offered and sold to persons located in the United States and remains fully compliant with the terms and conditions of such letter or certification; or

(2) Have received a Foreign Trading System No-Action Letter from the Division of Market Oversight and remains fully compliant with the terms and conditions of such letter.

(g) *Deemed To Be in Conformance.* Unless notified pursuant to paragraph (h) or (i) of this section, any non-narrow-based foreign security index futures contract submitted for expedited review under paragraph (e) of this section shall be deemed to be in conformance with the requirements of Section 2(a)(1)(C)(ii) of the Act and therefore, such futures contract may be offered or sold to persons located in the U.S. in accordance with Section 2(a)(1)(C)(iv) forty-five days after receipt by the Commission, or at the conclusion of such extended period as described under paragraph (h) of this section, provided that the foreign board of trade does not amend the terms or conditions of the contract or supplement the request for expedited consideration, except as requested by the Commission or for correction of typographical errors. Any voluntary substantive amendment by the foreign board of trade will be treated as a new submission under this section.

(h) *Extension of Review.* The Commission may extend the forty-five day review period set forth in paragraph (g) of this section for:

(1) An additional period up to forty-five days, if the request raises novel or complex issues that require additional time for review, in which case, the Commission will notify the foreign board of trade within the initial forty-five day review period and will briefly describe the nature of the specific issues for which additional time for review will be required; or

(2) Such extended period as the requesting foreign board of trade requests of the Commission in writing.

(i) *Termination of Review.* The Commission, at any time during its review under paragraph (e) of this section or extension thereof as described under paragraph (h) of this section, may notify the requesting foreign board of trade that it is terminating its review under paragraph (e) of this section if it appears to the Commission that the submission is materially incomplete or fails in form or substance to meet the requirements of this section.

(1) Such termination shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(2) The Commission shall also terminate review under this section if requested in writing to do so by the foreign board of trade.

(j) *Notice of Denial of Certification.* The Commission, at any time during its review, may notify the requesting foreign board of trade that it has determined that the security index futures contracts or underlying index does not conform with the requirements of Section 2(a)(1)(C)(ii) of the Act.

(1) This notification will briefly specify the nature of the issues raised and the specific requirement of subsections 2(a)(1)(C)(ii)(I)–(III) of the Act with which the security index futures contract does not conform or to which it appears not to conform or the

conformance to which cannot be ascertained from the submission.

(2) Such notification shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(k) *Foreign Trading Systems.* A foreign board of trade, who is a recipient of a Foreign Trading System No-Action Letter (and is compliant with the requirements of such letter) and is requesting Commission certification of its non-narrow-based security index futures contract, may request that such contract submitted under paragraph (e) of this section be made available for trading under that Letter upon expiration of the applicable review period provided for under either paragraph (g) or (h) of this section. Absent Commission notification to the contrary, the foreign board of trade may make that contract available for trading on the Foreign Trading System upon expiration of the review period provided under paragraph (g) or (h) of this section.

(l) *Changes in Facts and Circumstances.* Any certification of a non-narrow based security index futures contract submitted under paragraph (a) or (e) of this section shall be considered to be based on the facts and representations contained in the foreign board of trade's submissions to the Commission. Accordingly, the foreign board of trade shall promptly notify the Commission of any changes in material facts or representations.

(m) *Grandfathered No-Action Letters.* Any non-narrow-based security index futures contract that is the subject of an existing no-action letter issued by the Office of General Counsel, as of the date of the adoption of Rule 30.13, shall be deemed to be in conformance with the criteria of Section 2(a)(1)(C)(ii) of the Act, provided that the contract remains fully compliant with the requirements of such letter.

* * * * *

3. Appendix D to Part 30 is revised to read as follows:

**Appendix D to Part 30—Commission Certification With Respect to Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index**

In its analysis of a request for certification by a foreign board of trade relating to a security index futures contract traded on that foreign board of trade pursuant to Regulation 30.13, the Commission will evaluate the contract to ensure that it complies with the three criteria of Section 2(a)(1)(C)(ii) of the Act.

(1) Because security index futures contracts are cash settled, the Commission also evaluates the contract terms and conditions relating to cash settlement. In that regard, the Commission examines, among other things, whether the cash price series is reliable, acceptable, publicly available and timely; that the cash settlement price is reflective of the underlying cash market; and that the cash settlement price is not readily susceptible to manipulation. In making its determination, the Commission considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and any other relevant factors.

(2) In considering the susceptibility of an index to manipulation, the Commission examines several factors, including the structure of the primary and secondary markets for the component equities, the liquidity of the component stocks, the method of index calculation, the total capitalization of stocks underlying the index, the number, weighting and capitalization of individual stocks in the index, and the existence of surveillance sharing agreements between the board of trade and the securities exchange(s) on which the underlying securities are traded.

(3) To verify that the index is not narrow-based, the Commission considers the number and weighting of the component securities and the aggregate value of average daily trading volume of the lowest weighted quartile of securities. Under the Act, a security index is narrow-based if it meets any one of the following criteria:

(i) The index is composed of fewer than 10 securities;

(ii) Any single security comprises more than 30% of the total index weight;

(iii) The five largest securities comprise more than 60% of the total index weight; or

(iv) The lowest-weighted securities that together account for 25% of the total weight of the index have an aggregate dollar value of average daily trading volume of less than US$30 million (or US$50 million if the index includes fewer than 15 securities).

Issued in Washington, DC, on November 30, 2010 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010–31014 Filed 12–10–10; 8:45 am]

**BILLING CODE 6351–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2010–0798–201048; FRL–9237–7]**

### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Rome; Determination of Attaining Data for the 1997 Annual Fine Particulate Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Rome, Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as "the Rome Area") has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The Rome Area is comprised of Floyd County in its entirety. This proposed clean data determination is based upon complete, quality-assured and certified ambient air monitoring data for the 2007—2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed clean data determination, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS.

**DATES:** Comments must be received on or before January 12, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0798, by one of the following methods:

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

2. *E-mail: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9040.

4. *Mail:* EPA–R04–OAR–2010–0798, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2010–0798. 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 e-mail, 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 e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov*. Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

I. What action is EPA taking?
II. What is the background for this action?
III. Does the Rome area meet the annual $PM_{2.5}$ NAAQS?
A. Criteria
B. Rome Area Air Quality
IV. What is the effect of this action?
V. Statutory and Executive Order Reviews

## I. What action is EPA taking?

EPA is proposing to determine that the Rome Area (comprised of Floyd County) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS.[1] The proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS.

## II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m$^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m$^3$. *See* 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Rome Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.311.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m$^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour NAAQS of 35 μg/m$^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Rome Area as attainment for the 2006 24-hour NAAQS (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Rome Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour standard. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour NAAQS.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA*, 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of the remanded 2006 annual NAAQS.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for State and Tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

## III. Does the Rome area meet the annual $PM_{2.5}$ NAAQS?

### *A. Criteria*

Today's rulemaking proposes that the Rome Area is attaining the 1997 annual $PM_{2.5}$ NAAQS. The Rome Area is comprised of Floyd County in its entirety.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ NAAQS are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m$^3$ at all relevant monitoring sites in the subject Area.

### *B. Rome Area Air Quality*

EPA has reviewed the ambient air monitoring data for the Rome Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period from 2007–2009.

The following table provides the annual average concentrations averaged over 2007–2009 at the site in the Rome Area with at least 75 percent complete data in each quarter of each of those 3 years. Quarters 1 and 2 of 2008 had completeness of approximately 73 percent for site 13–115–0005, which is the only particulate matter monitoring site in this Area. Data substitution, as described in 40 CFR part 50, Appendix

[1] "1997 annual $PM_{2.5}$ NAAQS" refers to both the primary and secondary standards, which are identical.

N, was used to make a complete record. In March 2009, 13–115–0005 was relocated to site 13–115–0003. The design value below is a combined monitor record. The 3-year average annual concentration for 2007–2009 on this table without data substitution is 13.3 $\mu g/m^3$ and 14.6 $\mu g/m^3$ with data substitution.

TABLE 1—ANNUAL AVERAGE CONCENTRATIONS IN THE ROME AREA

| | County | Site No. | Annual average concentration ($\mu g/m^3$) |
|---|---|---|---|
| Without data substitution | Floyd | 13–115–0003 | 13.3 |
| With data substitution | Floyd | 13–115–0003 | 14.6 |

The Rome Area is meeting the 1997 annual $PM_{2.5}$ NAAQS both with and without data substitution. More generally, EPA believes that the Rome Area is now meeting the 1997 annual $PM_{2.5}$ NAAQS.

Since few data are available for 2010, the 2007–2009 data represent the most recent available data for EPA to use in its assessment. On the basis of this review, EPA is proposing to determine that the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS.

EPA is soliciting public comments on its proposal to determine that the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS.

## IV. What is the effect of this action?

If this proposed clean data determination is made final, the requirements for the Rome $PM_{2.5}$ nonattainment Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the Area continues to attain the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the annual $PM_{2.5}$ NAAQS.

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Rome nonattainment Area, and the Area would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA or Act). Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Rome Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

This action is only a proposed clean data determination that the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS. Today's action does not address the 24-hour $PM_{2.5}$ NAAQS.

If the Rome Area continues to monitor attainment of the annual $PM_{2.5}$ NAAQS, the requirements for the Rome Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS will remain suspended.

## V. Statutory and Executive Order Reviews

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

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

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

## List of Subjects in 40 CFR Part 52

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

Dated: November 30, 2010.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010–31208 Filed 12–10–10; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1167]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before March 14, 2011.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1167, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Flooding source(s) | Location of referenced elevation** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **St. Charles County, Missouri, and Incorporated Areas** | | | | |
| Baltic Creek | At the confluence with Dardenne Creek | +472 | +470 | City of Cottleville, City of St. Peters, City of Weldon Spring, Unincorporated Areas of St. Charles County. |
| | Approximately 0.7 mile upstream of the confluence with Tributary 7. | +494 | +492 | |

| Flooding source(s) | Location of referenced elevation ** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Boschert Creek | At the confluence with Cole Creek | +443 | +441 | City of St. Charles, Unincorporated Areas of St. Charles County. |
| | Approximately 0.6 mile upstream of Sibley Street | +522 | +532 | |
| Cole Creek | Approximately 0.4 mile upstream of the confluence with Boschert Creek. | +442 | +443 | City of St. Charles. |
| | Approximately 800 feet upstream of Graystone Drive | +528 | +529 | |
| Crooked Creek | At the confluence with Dardenne Creek | +476 | +475 | City of Cottleville, City of O'Fallon, City of Weldon Spring, Unincorporated Areas of St. Charles County. |
| | Approximately 0.7 mile upstream of I-64 | None | +574 | |
| Cunningham Branch | At the confluence with Dardenne Creek | +538 | +535 | City of O'Fallon, Unincorporated Areas of St. Charles County. |
| | Approximately 1,250 feet upstream of State Highway D. | None | +644 | |
| Dardenne Creek | Approximately 400 feet downstream of Norfolk Southern Railroad. | +443 | +444 | City of Cottleville, City of O'Fallon, City of St. Peters, Town of Dardenne Prairie, Unincorporated Areas of St. Charles County. |
| | Approximately 2.3 miles upstream of Oberhelman Road. | +752 | +748 | |
| East Branch Spencer Creek | At the confluence with Spencer Creek | +456 | +458 | City of St. Peters. |
| | Just downstream of Boone Hills Drive | +499 | +503 | |
| East Branch | At the confluence with Dardenne Creek | +481 | +480 | City of Cottleville, City of O'Fallon, Unincorporated Areas of St. Charles County. |
| Tributary B | Approximately 150 feet upstream of State Highway K | +516 | +525 | |
| East Cole Creek | At the confluence with Cole Creek | +454 | +457 | City of St. Charles. |
| | Approximately 600 feet upstream of Canary Lane | +487 | +478 | |
| Kraut Run | At the confluence with Dardenne Creek | +505 | +506 | Unincorporated Areas of St. Charles County. |
| | Approximately 1,000 feet upstream of Wilson Road | None | +607 | |
| Lake Sainte Louise | Entire shoreline within community | None | +546 | City of Lake St. Louis, Unincorporated Areas of St. Charles County. |
| Little Dardenne Creek | At the confluence with Dardenne Creek | +553 | +554 | |
| | Approximately 0.9 mile upstream of Morrison Lane | None | +719 | |
| Oday Creek | At the confluence with Dardenne Creek | +504 | +505 | City of Lake St. Louis, City of O'Fallon, City of St. Charles, Unincorporated Areas of St. Charles County. |
| | Approximately 425 feet upstream of State Highway N | None | +587 | |
| Old Dardenne Creek | At the confluence with Dardenne Creek | +485 | +486 | City of O'Fallon, City of St. Charles, Town of Dardenne Prairie, Unincorporated Areas of St. Charles County. |
| | Approximately 350 feet upstream of U.S. Route 40/61 | None | +502 | |
| Peruque Creek | Approximately 0.3 mile downstream of State Highway Z. | +532 | +530 | City of Foristell, City of Wentzville, Unincorporated Areas of St. Charles County. |
| | Approximately 1.3 miles upstream of State Highway T | None | +630 | |
| Peruque Creek | At the confluence with Peruque Creek | None | +613 | City of Foristell, Unincorporated Areas of St. Charles County. |
| Tributary 2 | Approximately 600 feet upstream of State Highway T | None | +734 | |

| Flooding source(s) | Location of referenced elevation** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Peruque Creek Tributary 8 | Approximately 1.0 mile upstream of the confluence with Peruque Creek. | None | +505 | City of Lake St. Louis, City of Wentzville. |
| | Approximately 0.6 mile upstream of I-70 | None | +546 | |
| Peruque Creek Tributary 9 | Approximately 1.0 mile upstream of the confluence with Peruque Creek. | +504 | +505 | City of Lake St. Louis, Unincorporated Areas of St. Charles County. |
| | Approximately 0.4 mile upstream of Henke Road | None | +539 | |
| Peruque Creek Tributary 12 | At the confluence with Peruque Creek | +472 | +471 | City of St. Paul, Unincorporated Areas of St. Charles County. |
| | Approximately 0.4 mile upstream of Meadow Farm Lane. | None | +527 | |
| Peruque Creek Tributary 14 | Approximately 0.2 mile upstream of the confluence with Peruque Creek. | None | +464 | City of O'Fallon, Unincorporated Areas of St. Charles County. |
| | Approximately 1,000 feet upstream of Civic Park Drive. | None | +512 | |
| Peruque Creek Tributary 15 | Approximately 900 feet upstream of the confluence with Peruque Creek. | None | +464 | City of O'Fallon. |
| | Approximately 1,300 feet upstream of Main Street | None | +507 | |
| Sandfort Creek | Just downstream of Norfolk Southern Railroad | +443 | +442 | City of St. Charles, Unincorporated Areas of St. Charles County. |
| | Approximately 350 feet downstream of Muegge Road | None | +497 | |
| Schote Creek | At the confluence with Dardenne Creek | +482 | +481 | City of O'Fallon, Town of Dardenne Prairie, Unincorporated Areas of St. Charles County. |
| | Approximately 1.6 miles upstream of U.S. Route 40/61. | None | +583 | |
| Spencer Creek | Approximately 365 feet upstream of the railroad | +443 | +444 | City of St. Peters, Unincorporated Areas of St. Charles County. |
| | Approximately 1,200 feet upstream of Millwood Drive | +525 | +526 | |
| Tributary A | At the confluence with Dardenne Creek | +470 | +469 | City of St. Peters, Unincorporated Areas of St. Charles County. |
| | Approximately 500 feet upstream of Starlight Drive | +533 | +536 | |
| Tributary No. 1 | At the confluence with Dardenne Creek | +461 | +464 | City of St. Peters, Unincorporated Areas of St. Charles County. |
| | Approximately 400 feet upstream of Harris Drive | None | +473 | |
| Tributary No. 2 | Just upstream of Ohmes Road | +466 | +465 | City of St. Peters. |
| | Approximately 0.5 mile upstream of Ohmes Road | None | +478 | |
| Tributary No. 3 | At the confluence with Tributary A | +470 | +469 | Unincorporated Areas of St. Charles County. |
| | Approximately 0.8 mile upstream of St. Peters-Howell Road. | None | +503 | |
| Tributary No. 4 | At the confluence with Tributary A | +470 | +469 | City of St. Peters, Unincorporated Areas of St. Charles County. |
| | Approximately 1,150 feet upstream of Woodstream Drive. | None | +509 | |
| Tributary No. 7 | At the confluence with Baltic Creek | +483 | +482 | City of St. Peters, City of Weldon Spring. |
| | Approximately 0.8 mile upstream of Pitmann Hill Road. | None | +504 | |
| Tributary No. 9 | At the confluence with Crooked Creek | +479 | +480 | City of Weldon Spring, Unincorporated Areas of St. Charles County. |
| | Approximately 0.5 mile upstream of Guthermuth Road | +496 | +497 | |
| Tributary No. 13 | At the confluence with Dardenne Creek | +485 | +486 | City of O'Fallon, Town of Dardenne Prairie. |
| | Approximately 700 feet upstream of McClure Road | +509 | +508 | |

| Flooding source(s) | Location of referenced elevation** | *Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Tributary No. 15 | At the confluence with Dardenne Creek | +496 | +495 | City of O'Fallon, Town of Dardenne Prairie, Unincorporated Areas of St. Charles County. |
| | Approximately 300 feet upstream of Keystone Crossing Drive. | None | +567 | |
| Tributary No. 17 | Approximately 0.8 mile upstream of the confluence with Dardenne Creek. | None | +522 | City of O'Fallon, Unincorporated Areas of St. Charles County. |
| | Approximately 900 feet upstream of Hopewell Road | None | +895 | |
| Tributary No. 19 | Approximately 1,300 feet upstream of the confluence with Dardenne Creek. | +504 | +505 | Unincorporated Areas of St. Charles County. |
| | Approximately 2.1 miles upstream of the confluence with Dardenne Creek. | None | +573 | |
| West Branch Spencer Creek | At the confluence with Spencer Creek | +453 | +450 | Unincorporated Areas of St. Charles County. |
| | Approximately 400 feet upstream of Willott Road | None | +510 | |
| West Branch Tributary B | At the confluence with East Branch Tributary B | +491 | +489 | Town of Dardenne Prairie. |
| | Approximately 150 feet upstream of Bryan Road | None | +622 | |
| West Sandfort Creek | At the confluence with Sandfort Creek | +451 | +450 | City of St. Charles, Unincorporated Areas of St. Charles County. |
| | Approximately 1,400 feet upstream of Harry S. Truman Boulevard. | +466 | +459 | |

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Mean Sea Level, rounded to the nearest 0.1 meter.
**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**City of Cottleville**
Maps are available for inspection at City Hall, 5490 5th Street, Cottleville, MO 63338.

**City of Foristell**
Maps are available for inspection at City Hall, 121 Mulberry Street, Foristell, MO 63348.

**City of Lake St. Louis**
Maps are available for inspection at City Hall, 200 Civic Center Drive, Lake St. Louis, MO 63367.

**City of O'Fallon**
Maps are available for inspection at City Hall, 100 North Main Street, O'Fallon, MO 63366.

**City of St. Charles**
Maps are available for inspection at City Hall, 200 North 2nd Street, St. Charles, MO 63301.

**City of St. Paul**
Maps are available for inspection at City Hall, 2300 Saint Paul Road, St. Paul, MO 63366.

**City of St. Peters**
Maps are available for inspection at City Hall, 1 Saint Peter Centre Boulevard, St. Peters, MO 63376.

**City of Weldon Spring**
Maps are available for inspection at City Hall, 5401 Independence Road, Weldon Spring, MO 63304.

**City of Wentzville**
Maps are available for inspection at City Hall, 310 West Pearce Boulevard, Wentzville, MO 63385.

**Town of Dardenne Prairie**
Maps are available for inspection at the Town Hall, 2032 Hanley Road, Dardenne Prairie, MO 63368.

**Unincorporated Areas of St. Charles County**
Maps are available for inspection at the St. Charles County Administrative Building, 201 North 2nd Street, St. Charles, MO 63301.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 3, 2010.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010–31151 Filed 12–10–10; 8:45 am]

**BILLING CODE 9110–12–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket No. 97–95; FCC 10–186]**

### Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Federal Communications Commission published a document in the **Federal Register** of November 22, 2010, concerning a request for comment on technical rules for satellite systems in the 37.5–42.5 GHz band. The document contained incorrect proceeding numbers and incorrect language regarding the filing of comments on information collection requirements.

**DATES:** The comment date for the proposed rule published November 22, 2010, 75 FR 71064, remains January 6, 2011, and reply comments remain due on or before February 7, 2011.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of November 22, 2010, on page 71064, correct the **ADDRESSES** caption to read:

**ADDRESSES:** You may submit comment. identified by IB Docket No. 97–95, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.

*People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by *e-mail: FCC504@fcc.gov,* phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

In the **Federal Register** of November 22, 2010, on page 71064–65, correct the "**SUPPLEMENTARY INFORMATION**" caption to read:

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Notice of Proposed Rulemaking (*Third Notice*) in IB Docket No. 97–95, adopted October 29, 2010 and released on November 1, 2010. The full text of the Notice of Proposed Rulemaking is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail *FCC@BCPIWEB.com.*

The *Third Notice* contains potential proposed new or modified information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). The Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in the *Third Notice.* These PRA comments are due on or before February 11, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. If the Commission adopts new or revised information collection requirements, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirements before a submission is made to the OMB for approval of the information collection requirements.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission will seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Dated: November 23, 2010.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. C1–2010–30984 Filed 12–10–10; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 223

**[Docket No. 101124581–0584–01]**

**RIN 0648–XA046**

### Endangered and Threatened Species; 90-Day Finding on Petitions To Delist the Eastern Distinct Population Segment of the Steller Sea Lion

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

**ACTION:** Notice of 90-day petition finding; request for information.

**SUMMARY:** We (NMFS) announce a 90-day finding on two petitions to delist the eastern Distinct Population Segment (DPS) of the Steller Sea Lion (*Eumetopias jubatus*) under the Endangered Species Act of 1973, as amended (ESA). We find that the petitions present substantial scientific or commercial information indicating that the petitioned action may be warranted. We are continuing our status review of this DPS to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are again soliciting scientific and commercial information regarding this species from any interested party.

**DATES:** Information and comments must be submitted to NMFS by February 11, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 0648–XA046, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Hand-delivery:* Assistant Regional Administrator, Protected Resources Division, NMFS, Alaska Regional Office, Attn: Ellen Sebastian, Juneau Federal Building, 709 West 9th Street, Room 420A, Juneau, AK 99802–1668.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Facsimile (fax):* (907) 586–7557.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business

Information or otherwise sensitive or protected information. 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, WordPerfect, or Adobe PDF file formats only.

The petitions may be viewed at: *http://www.alaskafisheries.noaa.gov./protectedresources/stellers/edps/status.htm.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Lisa Rotterman, NMFS, Alaska Region, (907) 271–1692; Kaja Brix, NMFS, Alaska Region, (907) 586–7235; or Lisa Manning, NMFS, Office of Protected Resources, (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

## ESA Statutory Provisions and Policy Considerations

The Administrative Procedure Act and ESA enable an interested person to petition for the listing or delisting of a species, subspecies, or DPS of a vertebrate species which interbreeds when mature (5 U.S.C. 553(e), 16 U.S.C.1533(b)(3)(A)). ESA-implementing regulations issued by NMFS and the U.S. Fish and Wildlife Service (FWS) also establish procedures for receiving and considering petitions to revise the lists and for conducting periodic reviews of listed species (50 CFR 424.01).

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that the Secretary of Commerce (Secretary) make a finding as to whether a petition to delist a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If the Secretary finds that a petition presents substantial information indicating that the requested action may be warranted, the Secretary must conduct a status review of the species concerned.

Section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries. In making the 12-month finding whether the petitioned action is warranted, we will also determine whether the eastern DPS continues to qualify as a threatened species.

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" (ESA section 3(6)). A threatened species is defined as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (ESA section 3(19)). The basis for the determination of a species' status under the ESA is provided in section 4 of the ESA. Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species which interbreeds when mature (16 U.S.C. 1532 (16)). Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors:

(A) Present or threatened destruction, modification, or curtailment of habitat or range;

(B) Over-utilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) Inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Regulations implementing the ESA instruct NMFS to consider these same factors when determining whether to delist a species, a subspecies, or a DPS (50 CFR 424.11(d)).

Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Regulations implementing the ESA provide the rules for revising the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 424). The regulations provide criteria for determining species to be endangered or threatened. In addition to identifying the factors that NMFS should consider when determining whether to delist a species, a subspecies, or a DPS, the ESA implementing regulations state that a species may be delisted for one or more of the following reasons: The species is extinct or has been extirpated from its previous range; the species has recovered and is no longer endangered or threatened; or investigations show the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

## Background

The Steller sea lion (*Eumetopias jubatus*) was listed as a threatened species under the ESA on April 5, 1990 (55 FR 12645). Critical habitat was designated on August 27, 1993 (58 FR 45269), based on the location of terrestrial rookery and haulout sites, spatial extent of foraging trips, and availability of prey. In 1997, based on demographic and genetic dissimilarities, we designated two DPSs of Steller sea lions under the ESA: A western DPS and an eastern DPS (62 FR 24345, 62 FR 30772). Due to persistent decline, the western DPS was reclassified as endangered, while the increasing eastern DPS remained classified as threatened.

We completed the first recovery plan for Steller sea lions in December 1992. At that time, the entire species was listed as threatened under the ESA. Because that recovery plan became obsolete after the reclassification of Steller sea lions into two distinct population segments (DPS) in 1997, and because nearly all of the recovery actions contained in the first plan had been completed, NMFS assembled a new Steller Sea Lion Recovery Team (Team) in 2001 to assist NMFS in revising the Recovery Plan and further promote conservation of the species. In March, 2008, NMFS released a Revised Recovery Plan for the Steller Sea Lion: Eastern and Western Distinct Population Segments (Recovery Plan). The 2008 Recovery Plan states that, in 2002, the number of individuals in the eastern DPS was estimated to be between 46,000 and 58,000 and that this population had been increasing at approximately 3 percent per year since the late 1970s (Pitcher *et al.* 2007, as cited in NMFS 2008:x). The Executive Summary of the 2008 Recovery Plan states that the eastern DPS appears to have recovered from the predator control programs of the 20th century, which extirpated animals at rookeries and haulouts, no substantial threats are currently evident, and the population continues to increase at approximately 3 percent per year (NMFS 2008). The 2008 Recovery Plan also summarizes that:

"* * * no threats to continued recovery were identified for the eastern DPS. Although several factors affecting the western DPS also affect the eastern DPS (*e.g.*, environmental

variability, killer whale predation, toxic substances, disturbance, shooting), these threats do not appear to be at a level sufficient to keep this population from continuing to recover, given the long term sustained growth of the population as a whole. However, concerns exist regarding global climate change and the potential for the southern part of the range (*i.e.*, California) to be adversely affected. Future monitoring should target this southern portion of the range" (NMFS 2008:xiii)."

It further states, "The primary action[s] [recommended] in the plan [are] to initiate a status review for the eastern DPS and consider removing it from the Federal List of Endangered Wildlife and Plants." (NMFS 2008:xvi). The 2008 Recovery Plan identifies the following delisting criteria:

1. The population has increased at an average annual growth rate of 3 percent per year for 30 years.

2. The ESA listing factor criteria are met. NMFS (2008: viv).

The Recovery Plan states that when the first of these criteria has been met, NMFS will evaluate the ESA listing factor criteria to determine whether to delist the eastern DPS.

On June 29, 2010, we provided notice of the initiation of a 5-year status review of the eastern DPS of Steller sea lion under the ESA and opened a public comment period (75 FR 37385, June 29, 2010; 75 FR 38979, Wednesday, July 7, 2010). The agency subsequently re-opened a second public comment period (75 FR 53272, August 31, 2010). A 5-year status review is a periodic process conducted to ensure that the listing classification of a species is accurate, and it is based on the best scientific and commercial data available at the time of the review. On the basis of such reviews under section 4(c)(2)(B) of the ESA, we determine whether or not any species should be removed from the list (delisted), or reclassified from endangered to threatened or from threatened to endangered.

**Analysis of the Petitions**

On August 30, 2010, we received a petition from the States of Washington and Oregon to delist the eastern DPS of Steller sea lion under the ESA. On September 1, 2010, the Secretary of Commerce received a petition from the State of Alaska to delist the eastern DPS of Steller sea lion. Both petitions contend that the eastern DPS of Steller sea lions has recovered, is not in danger of extinction now, and is not likely to be in danger in the foreseeable future. Because we received two petitions within a short period of time that requested the same action, we have considered the two petitions jointly in making our 90-day finding.

Both petitions make multiple references to statements, information, and conclusions from the aforementioned 2008 Revised Recovery Plan, and literature cited within this document. For example, the conclusion section of the State of Alaska petition states:

"In the 2008 Recovery Plan, NMFS concluded that "[n]o threats to recovery [of the Eastern DPS of the Steller sea lion] have been identified and the population has been increasing for over 25 years, new rookeries have been created, and the population is at historical high levels." 2008 Recovery Plan at VII–7."

Additionally, new information that was not available at the time of the 2008 Recovery Plan, but that was readily available in our files upon receipt of the petitions, was presented in the petitions. For example, the petition from the States of Oregon and Washington refers to a recently published paper when they state:

"Boyd (2010) concluded that "the eastern and western segments of the population have probabilities of persistence that mean they do not meet the criteria for classification as endangered and it would be reasonable to delist them"."

The State of Alaska's petition cites new aerial survey information provided in a memorandum from the Alaska Fishery Science Center to the Alaska Region Protected Resources Division of NMFS. This memorandum reported that Steller sea lion pup production in Southeast Alaska (eastern DPS) totaled 7,462 pups in 2009, with 7,443 counted at the 5 major rookeries where 5,510 had been counted in 2005.

The petitions also present some new information that was not readily available in our files. For example, the petition from the States of Oregon and Washington cites unpublished data from studies of Steller sea lions by the Oregon and Washington Departments of Wildlife to support their conclusion that

"None of the potential natural or manmade causes for population decline examined in the western population range appear to be having negative impacts on eastern stock sea lions occurring in Oregon and Washington * * *."

This petition also provides preliminary results of non-pup abundance survey data from 1976–2008 collected by the Oregon Department of Wildlife, and the Petitioners report that unpublished data from surveys conducted by the Washington Department of Fish and Wildlife (WDFW) along the Washington coast show both increasing Steller sea lion numbers at haulout areas as well as increasing numbers of newborn pups at several locations over recent years. The Petitioners further contend that the available data demonstrate 31 years of population growth in the area of the primary Steller sea lion rookeries in U.S. waters south of Alaska (citing Pitcher *et al.*, 2007). Based on the information presented and referenced in the petition, as well as all other information readily available in our files, we find that the petitions present substantial information indicating that the petitioned action may be warranted.

**Status Review and Solicitation of New Information**

As a result of this finding, we will continue our ongoing status review to determine whether the delisting of the eastern DPS of Steller sea lion under the ESA is warranted. We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, to ensure that the status review is complete and based on the best available scientific and commercial information, we are opening another public comment period for 60 days to solicit comments, suggestions, data, and information from the public, concerned governmental agencies, Native American tribes, conservation groups, the scientific community, industry, and any other interested parties concerning the status of the eastern DPS of the Steller sea lion (*Eumetopias jubatus*) throughout its range, including, but not limited to information on:

(A) Species biology, including, but not limited to, population trends, distribution and abundance, demographics, habitat use and requirements, genetics, and foraging ecology; (B) habitat conditions, including, but not limited to, amount, distribution, and suitability of habitat; (C) the effects of conservation measures that have been implemented to benefit the species; (D) status and trends of threats; and (E) other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

Upon completion of the status review, and within 12 months of our receipt of the first petition to delist this DPS, we must make one of the following findings: (1) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the **Federal Register** and so notify the petitioner; (2) the petitioned action is warranted, in which case the Secretary shall promptly publish in the **Federal Register** a proposed regulation to implement the action pursuant to 50 CFR 424.16; or (3) the petitioned action

is warranted, but that (A) the immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or reclassify species, and (B) expeditious progress is being made to list, delist, or reclassify qualified species, in which case such findings shall be promptly published in the **Federal Register** together with a description and evaluation of the reasons and data on which the finding is based.

We will base our findings on a review of the best scientific and commercial information available, including information received during the public comment periods opened during this status review.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 8, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–31232 Filed 12–10–10; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 75, No. 238
Monday, December 13, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Animal and Plant Health Inspection Service**

*Title:* Interstate Movement of Fruit from Hawaii.

*OMB Control Number:*.0579–0331.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Hawaii fruit and vegetables regulations contained in 7 CFR 318.13–1 through 318.13–25 govern, among other things, the interstate movement of fruits and vegetables from Hawaii. These regulations are necessary to prevent the spread of plant diseases and pest that occur in Hawaii but not on the mainland United States. The Animal and Plant Health Inspection Service (APHIS) revised the Hawaiian fruits and vegetables regulations to allow mangosteen, dragon fruit, melon, pods of cowpea and its relatives, breadfruit, jackfruit, and fresh drumstick tree pods to be moved interstate from Hawaii under certain conditions. APHIS will collect information using PPQ 530 and 540 forms.

*Need and Use of the Information:* APHIS will collect information from the forms to prevent the interstate spread of a number of destructive and economically damaging agricultural pests. If APHIS did not collect this information the effectiveness of APHIS' Hawaiian fruits and vegetables quarantine program would be severely compromised and could result in millions of dollars in damage to American agriculture.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 110.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 545.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010–31144 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food Safety and Inspection Service**

*Title:* Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) Requirements.

*OMB Control Number:* 0583–0103.

*Summary of Collection:* The Food Safety and Inspection Service (FSIS) has

been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS has established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a new framework for modernization of the current system of meat and poultry inspection.

*Need and Use of the Information:* FSIS will collect information to ensure that (1) establishments have developed and maintained a standard operating plan for sanitation that is used by inspection personnel in performing monitoring regulations; (2) establishments have developed written procedures outlining specimen collection and handling for *E.coli* process control verification testing; (3) establishments developed written HAACP plans; (4) establishments will keep records for measurements during slaughter and processing, corrective action, verification check results, and related activities that contain the identify of the product, the product code or slaughter production lot, and the date the record was made; (5) establishments may have prerequisite programs that are designed to provide the basic environmental and operating conditions necessary for the production of safe, wholesome food; and (6) establishments maintain and are able to supply upon request the following information concerning the suppliers of source materials; the name, point of contact, and phone number for the establishment supplying the source materials for the lot of ground beef sampled; and the supplier lot numbers, production dates, and other information that would be useful to know about suppliers.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 7,298.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Other (daily).

*Total Burden Hours:* 6,263,327.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010–31145 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

**[Docket No. 2010–0004]**

### Privacy Act of 1974; Proposed New System of Records; Veterinary Medicine Loan Repayment Program

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Notice of a proposed new Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA) proposes to establish a new Department of Agriculture system of records notice titled, "Veterinary Medicine Loan Repayment Program Records System, USDA/NIFA–1." This newly established system will be included in USDA's inventory of record systems.

**DATES:** Submit comments on or before January 12, 2011. This new system will be effective January 12, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. 2010–0004 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. E-mail: *vmlrp@nifa.usda.gov*. Include the text "VMLRP System of Records" in the subject line of the message. Fax: (202) 401–7752. Mail: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture, Department of Agriculture, STOP 2200, 1400 Independence Avenue, SW., Washington, DC 20250–2200. Hand Delivery/Courier: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture; Department of Agriculture; Room 3146, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024. Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Gary Sherman, National Program Leader, Veterinary Science, National Institute of Food and Agriculture, Department of Agriculture, STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220; Voice: 202–401–4952; Fax: 202–401–6156; E-mail: *gsherman@nifa.usda.gov*. For privacy issues, please contact: Stasia Hutchison, Freedom of Information and Privacy Act Officer, Information Staff, Agricultural Research Service, Research, Education, and Economic, Department of Agriculture, 5601 Sunnyside Avenue, STOP 5128, Beltsville, MD 20705–5128; Voice: 301–504–1655; Fax: 301–504–1647; E-mail: *stasia.hutchison@ars.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The proposed new system of records will be used by NIFA staff to: (1) Identify and select applicants for the Veterinary Medicine Loan Repayment Program (VMLRP); (2) monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default; and (3) to assist NIFA officials in the collection of overdue debts owed under the VMLRP. Records may be transferred to Administrative Billings and Collections, National Finance Center, Office of the Chief Financial Officer, USDA, for debt collection purposes when NIFA officials are unable to collect overdue debts owed under the VMLRP.

The amount of information recorded on each individual will be only that which is necessary to accomplish the needs of the program. Each record will be established initially from an application form submitted to the VMLRP by the applicant. The National Veterinary Medical Service Act (NVMSA) added section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997 (NARETPA), establishing a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) which authorizes the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations.

Section 7105 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, (FCEA) amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas

of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations. NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian, to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent.

The Internal Revenue Code at 26 U.S.C. 6109 requires the applicant's Social Security number for the receipt of loan repayment funds under the VMLRP. The Federal Debt Collection Procedures Act of 1990, Public Law 101–647 (28 U.S.C. 3201) requires that an individual who has a judgment lien against his/her property for a debt to the United States shall not be eligible to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as a beneficiary, until the judgment is paid in full or otherwise satisfied. Thus, individuals applying to the VMLRP are required to disclose in their applications whether they have a judgment lien against them arising from a debt to the United States.

The records in this system will be maintained in a secure manner compatible with their content and use. NIFA staff will be required to adhere to the provisions of the Privacy Act and the USDA Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are USDA employees and contractors responsible for implementing the VMLRP. The records will be stored initially in file folders. At a later stage, records will be stored on computer tape and discs. Prior to electronic storage, a Privacy Impact Assessment will be conducted. Manual and computerized records will be maintained in accordance with USDA Departmental Regulation 3080–001, Records Management; REE P&P 251.8, Records Management; REE P&P 251.8M, Records Management (Manual); REE P&P 116.0, Freedom of Information Act and Privacy Act Guidelines; and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Data stored in computers will be accessed through the use of keywords known only to authorized users. The room where physical records (files and folders) are stored is controlled by on-site personnel and will be locked whenever the room is not in use, even during regular business hours. Security guards perform random checks on the physical security of the data after hours, including weekends and holidays.

Consistent with USDA's information sharing mission, information stored in the Veterinary Medicine Loan Repayment Program system of records may be shared with other USDA components, as well as appropriate Federal, State, local, Tribal, foreign, or international government agencies. This sharing will only take place after USDA determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

In accordance with the Privacy Act of 1974, the USDA proposes to establish a new USDA system of records notice titled Veterinary Medicine Loan Repayment Program, USDA/NIFA–1. This newly established system will be included in the USDA's inventory of record systems.

## II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency.

Below is the description of the Veterinary Medicine Loan Repayment Program system of records, USDA/NIFA–1.

In accordance with 5 U.S.C. 552a(r), USDA has provided a report of this system of records to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; and Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives.

Signed at Washington, DC on December 6, 2010.

**Thomas J. Vilsack,**

*Secretary of Agriculture.*

**System of Records:**

USDA/NIFA–1

**SYSTEM NAME:**

Veterinary Medicine Loan Repayment Program (VMLRP) Record System, USDA/NIFA–1

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are maintained at the Office of Extramural Programs, National Institute of Food and Agriculture (NIFA), Department of Agriculture (USDA), 800 9th Street, SW., Washington, DC 20024.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered by this system include: Individuals who have applied for, who have been approved to receive, who are receiving, or who have received funds under the Veterinary Medicine Loan Repayment Program (VMLRP); and individuals who are interested in participation in the VMLRP.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Categories of records in this system include: Name, address, Social Security number, program application and associated forms, service pay-back obligations, employment data, professional performance and credentialing history of licensed veterinarians; personal, professional,

and demographic background information; standard school budgets; financial data including loan balances, deferment, forbearance, and repayment/delinquent/default status information; commercial credit reports; educational data including tuition and other related educational expenses; educational data including academic program and status; employment status verification (which includes certifications and verifications of continuing participation in qualified service); Federal, State and county tax related information, including copies of tax returns.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

7 U.S.C. 3151a; 26 U.S.C. 6109; 28 U.S.C. 3201

**PURPOSE(S):**

The purpose of this system is to: (1) Identify and select applicants for the VMLRP; (2) monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default; and (3) assist NIFA officials in the collection of overdue debts owed under the VMLRP. Records may be transferred to "Administrative Billings and Collections, National Finance Center, Office of the Chief Financial Officer, USDA, for debt collection purposes when NIFA officials are unable to collect overdue debts owed under the VMLRP.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including United States Attorney Offices, or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. USDA or any component thereof;

2. Any employee of USDA in his/her official capacity;

3. Any employee of USDA in his/her individual capacity where DOJ or USDA has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which USDA collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the written request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. NIFA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by USDA or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for USDA, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

H. USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109–282; codified at 31 U.S.C. 6101, *et seq.*); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), or similar statutes requiring agencies to make available publicly information concerning Federal financial assistance, including grants, subgrants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

I. Disclosure may be made to the parent locator service of the Department of Health and Human Services or authorized persons defined by Public Law 93–647 under 42 U.S.C. 653 of the name and current address of record of an individual who don't pay child support.

J. NIFA may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional and or academic accomplishments and plans, performance, credentials, and educational background, and to determine if an applicant is suitable for participation in the VMLRP.

K. NIFA may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

1. To another Federal agency so that agency can affect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

2. To another Federal agency so that agency can affect an authorized administrative offset; *i.e.*, withhold money, other than Federal salaries, payable to or held on behalf of the individual.

3. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes

of either collecting or compromising a debt or to have a commercial credit report prepared.

L. NIFA may disclose information from this system of records to another agency that has asked the USDA to affect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the offset.

M. NIFA may disclose to the IRS information about an individual applying for the VMLRP to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

N. NIFA may report to the IRS, as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under statute or regulations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

O. NIFA may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

P. NIFA may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a university's office of the registrar or dean's office, a professional organization, an alumni association, *etc.*, for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

Q. NIFA may disclose information from this system of records to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

R. NIFA will disclose from this system of records to the Department of Treasury, IRS: (1) A delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that the IRS can offset against the debt any income tax refunds which may be due to the individual.

S. NIFA may disclose information provided by a lender or educational institution to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government and the nature of the debt.

T. NIFA may disclose records to USDA contractors and subcontractors for the purpose of recruiting, screening, and matching veterinarians for employment in qualified shortage area positions under the VMLRP. In addition, USDA contractors and subcontractors:

1. May disclose biographic data and information supplied by potential applicants

(a) to references listed on application and associated forms for the purpose of evaluating the applicant's professional qualifications, experience, and suitability, and

(b) to a State or local government medical licensing board and/or to the Federation of State Medical Boards or a similar nongovernmental entity for the purpose of verifying that all claimed background and employment data are valid and all claimed credentials are current and in good standing;

2. May disclose biographic data and information supplied by references listed on application and associated forms to other references for the purpose of inquiring into the applicant's professional qualifications and suitability; and

3. May disclose professional suitability evaluation information to NIFA officials for the purpose of appraising the applicant's professional qualifications and suitability for participation in the VMLRP.

Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

Disclosure to consumer reporting agencies:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent debts to the Federal Government by making these debts part of their credit records, and (2) to enable NIFA to improve the quality of loan repayment decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities. The records are stored in file folders and electronic media, including computer tape, discs, servers, connected to local area networks, and Internet servers.

**RETRIEVABILITY:**

Records may be retrieved by name, Social Security number, or other identifying numbers or characteristics.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable USDA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Physical records (files and folders) are stored in an enclosed office that is controlled by on-site personnel and will be locked whenever the room is not in use, even during regular business hours. Security guards perform random checks

on the physical security of the data after hours, including weekends and holidays. A password is required to access the terminal and a data set name controls the release of data to only authorized users. Data on local area network computer files is accessed by keyword known only to authorized personnel.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of under the authority of the REE Policies and Procedures contained in REE Manual 251.8 "Records Management" and 251.8M "Records Management (Manual)", which establishes REE policies and procedures for the creation, maintenance, and disposition of records, and in accordance with the General Records Schedules issued by the National Archives and Records Administration.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

National Program Leader, Veterinary Science, National Institute of Food and Agriculture, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.da.usda.gov/foia.htm* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify the component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Any additional information that will help the FOIA staff determine which USDA component agency may have responsive records;
- The dates of enrollment in the VMLRP and current enrollment status, such as pending application approval or approved for participation;
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

*See* "Notification procedure" above.

**CONTESTING RECORD PROCEDURES:**

*See* "Notification procedure" above.

**RECORD SOURCE CATEGORIES:**

Records are obtained by subject individual; participating lending and loan servicing institutions; educational and grantee institutions; other Federal agencies; consumer reporting agencies/credit bureaus; National Student Clearinghouse; and third parties that provide references concerning the subject individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2010–31205 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–TM–10–0106]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of the currently approved information collection for OMB 0581–0229 Form TM–28, USDA Farmers Market Application. Copies of this one-time yearly application form to participate in the U.S. Department of Agriculture (USDA) Farmers Market at 12th Street and Independence Avenue, SW., Washington, DC may be obtained by calling the AMS Marketing Services Branch contact listed.

**DATES:** Comments received by February 11, 2011 will be considered.

*Additional Information or Comments:* Contact Errol R. Bragg, Director, Marketing Services Division, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 4004–South, 1400 Independence Avenue, SW., Washington, DC, 20250–0269; 202/720–8317, or fax 202/690–0031.

Comments should reference docket number AMS–TM–10–0106,and be sent to Mr. Errol Bragg at the above address or via the Internet at *http://www.regulations.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* USDA Farmers Market Application.

*OMB Number:* 0581–0229.

*Expiration Date of Approval:* April 30, 2011.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market packaging, handling, transporting, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C. 1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels.

On December 23, 2005, the AMS published a final rule in the **Federal Register** (70 FR 76129) to implement established regulations and procedures under 7 CFR part 170 for AMS to operate the USDA Farmers Market, specify vendor criteria and selection

procedures, and define guidelines to be used for governing the USDA Farmers Market annually on 12th Street and Independence Ave., SW., Washington, DC. A one-time yearly submission information collection in a required application form was also established.

The information collection in *Form TM–28, USDA Farmers Market Application* is required by farms or businesses participating at the USDA Farmers Market. The information allows AMS the means of reviewing the type of products available for sale and selecting participants for the annual market season. The type of information within the application includes: (1) Certification the applicant is the owner or representative of the farm or business; (2) applicant contact information including name(s), address, phone number, and e-mail address; (3) farm or business location; (4) types of products grown; (5) business practices; and (6) insurance coverage.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.12 hours per response.

*Respondents:* Farmers and/or vendors completing the application to participate in the USDA Farmers Market.

*Estimated Number of Respondents:* 30.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 3.6 hours.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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.

Comments may be sent to Errol R. Bragg at the address listed under section "ADDITIONAL INFORMATION OR COMMENTS" or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. Comments must be received by February 11, 2011. All comments received by AMS will be available for public inspection during regular business hours, 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the same address; and can be viewed via the Internet at *http://www.regulations.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 7, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31203 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Document No. AMS–ST–10–0052]**

### Plant Variety Protection Board; Reestablishment of the Plant Variety Protection Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), this notice announces that the Secretary of Agriculture intends to reestablish the Plant Variety Protection Board.

**FOR FURTHER INFORMATION CONTACT:** Paul Zankowski, USDA, Agricultural Marketing Service (AMS), 10301 Baltimore Blvd., Room 401, National Agricultural Library, Beltsville, MD 20705–2351 or by phone at (301) 504–7475 or by Internet: *http://www.regulations.gov* or by e-mail: *Paul.Zankowski@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Plant Variety Protection Act (Act) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines.

The Act also provides for a statutory Board (7 U.S.C. 2327) to be appointed by the Secretary of Agriculture. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Act; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the Act, "Public Interest in Wide Usage" (7 U.S.C. 2404). Reestablishing the Board is necessary and in the public interest.

The Act provides that "the Board shall consist of individuals who are experts in various areas of varietal development covered by this Act." The Board membership "shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public." The Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. Nominations are made by farmers' associations, trade associations in the seed industry, professional associations representing expertise in seed technology, plant breeding, and variety development, public and private research and development institutions (13 members) and the USDA (one member).

Equal opportunity practices, in agreement with USDA nondiscrimination policies, will be followed in all membership appointments to the Board. To ensure that the suggestions of the Board have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The Charter for the Board will be available on the Web site at: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5O59988* or may be requested by contacting the individual identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. Persons with disabilities who require alternative means for communication of program information (braille, large print, or audiotape) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA

is an equal opportunity provider and employer.

Dated: December 7, 2010.

**Pearlie S. Reed,**

*Assistant Secretary for Administration.*

[FR Doc. 2010–31219 Filed 12–10–10; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Gogebic Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Gogebic Resource Advisory Committee will meet in Ironwood, Michigan. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review and make recommendations on Title II Projects submitted by the Public.

**DATES:** The meeting will be held on January 6, 2011, and will begin at 9:30 a.m. (CST).

**ADDRESSES:** The meeting will be held at the Ottawa National Forest Supervisor's Office, E6248 U.S. Hwy. 2, Ironwood, Michigan. Written comments should be sent to Lisa Klaus, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938. Comments may also be sent via e-mail to *lklaus@fs.fed.us* or via facsimile to 906–932–0122.

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 Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI 49938.

**FOR FURTHER INFORMATION CONTACT:** Lisa Klaus, RAC coordinator, USDA, Ottawa National Forest, E6248 U.S. Hwy. 2, Ironwood, MI, (906) 932–1330, ext. 328; e-mail *lklaus@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 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Review and approval of previous meeting minutes. (2) Review and approval of Team Charter and Title II Project Evaluation Criteria. (3) Review and make recommendations for Title II Projects submitted by the public. (4) Public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: December 6, 2010.

**Susan J. Spear,**

*Designated Federal Officer.*

[FR Doc. 2010–31170 Filed 12–10–10; 8:45 am]

BILLING CODE P

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting Notice

**DATE AND TIME:** Friday, December 17, 2010, 11 a.m.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

**SUBJECT:** Notice of Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. The BBG will hear a Middle East trip report, a report from the Board's Budget and Strategy Committee, and a report from the Chairman of the International Broadcasting Bureau Coordinating Committee on distribution/technology. The meeting is open to public observation via streamed Web cast, both live and on-demand, on the BBG's public Web site at *http://www.bbg.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

**Paul Kollmer-Dorsey,**

*Deputy General Counsel.*

[FR Doc. 2010–31397 Filed 12–9–10; 4:15 pm]

BILLING CODE 8610–01–P

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice—Amended

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of Meeting.

**DATE AND TIME:** Friday, December 17, 2010; 11:30 a.m. EST.

**PLACE:** Via Teleconference, Public Dial In: 1–800–597–7623, Conference ID#: 31039129.

**Meeting Agenda**

This meeting is open to the public.

I. Approval of Agenda
II. Welcome New Commissioners
III. Management and Operations:
- Review of transition, order of succession, continuity of operations.
- Review of 2011 meeting calendar.
- Staff Director's report.

IV. Program Planning: Update and discussion of projects.
- Cy Pres.
- Disparate Impact in School Discipline Policies.
- Gender and the Wage Gap.
- Title IX—Sex Discrimination in Liberal Arts College Admissions.
- Eminent Domain Project.
- NBPP.

V. State Advisory Committee Issues:
- Update on status of North Dakota, Illinois and Minnesota SACs.
- Update on Vermont SAC.

VI. Approval of Minutes of December 3, 2010 Meeting
VII. Announcements
VIII. Adjourn

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. *TDD:* (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. *TDD:* (202) 376–8116.

Dated: December 9, 2010.

**David Blackwood,**

*General Counsel.*

[FR Doc. 2010–31347 Filed 12–9–10; 4:15 pm]

BILLING CODE 6335–01–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.

*Title:* Request for Duty-Free Entry of Scientific Instruments or Apparatus.

*Form Number(s):* ITA–338P.

*OMB Control Number:* 0625–0037.

*Type of Request:* Regular submission.

*Burden Hours:* 130.

*Number of Respondents:* 65.

*Average Hours per Response:* 2.

*Needs and Uses:* The Departments of Commerce and Homeland Security ("DHS") are required to determine whether non-profit institutions established for scientific or educational purposes are entitled to duty-free entry

for scientific instruments that the institutions import under the Florence Agreement. Form ITA–338P enables: (1) DHS to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States. Without the collection of the information, DHS and Commerce would be unable to carry out the responsibilities assigned by law.

*Affected Public:* Federal, State or local government; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov*.

Dated: December 7, 2010.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–31138 Filed 12–10–10; 8:45 am]

**BILLING CODE 3510–DS–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:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Vessel Monitoring System Requirements in the Western Pacific Pelagic Longline Fishery, American Samoa Longline and Commonwealth of the Northern Mariana Islands Bottomfish Fisheries.

*OMB Control Number:* 0648–0441.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 208.

*Average Hours Per Response:* Installation of vessel monitoring system (VMS), 4 hours; replacement, two hours, maintenance/repair, one hour and 30 minutes.

*Burden Hours:* 170.

*Needs and Uses:* As part of the Western Pacific Management Plan, authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), vessels registered to Hawaii longline limited entry permits, large (greater than 50 ft. overall length) vessels registered to American Samoa longline limited entry permits, and medium (greater than 40 ft. overall length) and large vessels registered to Commonwealth of the Northern Mariana Islands (CNMI) bottomfish permits must have satellite-based vessel monitoring systems (VMS) installed and operating during all fishing operations. VMS data are used to monitor compliance with closed and prohibited fishing areas (including Marine National Monument areas closed to commercial fishing), and verification of logbook reports, among other compliance and verification purposes. This renewal includes the consolidation of VMS requirements from currently approved OMB Control Numbers 0648–0441 (VMS requirements for the Hawaii longline fishery), 0648–0519 (VMS requirements for the American Samoa longline fishery), and 0648–0584 (permitting, vessel identification, and VMS requirements for the commercial bottomfish fishery in the CNMI) into 0648–0441.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: December 7, 2010.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–31155 Filed 12–10–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 69–2010]**

### Proposed Foreign-Trade Zone—Terrebonne Parish, LA; Under Alternative Site Framework; Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Houma-Terrebonne Airport Commission to establish a general-purpose foreign-trade zone at sites in Terrebonne Parish, Louisiana, adjacent to the Morgan City Customs and Border Protection (CBP) port of entry, under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 6, 2010. The applicant is authorized to make the proposal under the Louisiana Revised Statutes, Title 51, Sections 61–65.

The proposed zone would be the second general-purpose zone for the Morgan City CBP port of entry. The existing zone is as follows: FTZ 261, Alexandria, Louisiana (Grantee: Board of Commissioners of the England Economic and Industrial Development District, Board Order 1325, 4/21/2004).

The applicant's proposed service area under the ASF would be Terrebonne Parish, Louisiana. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Morgan City Customs and Border Protection port of entry.

The proposed zone would initially include two "magnet" sites in Terrebonne Parish: *Proposed Site 1*

(1,640 acres)—Houma Terrebonne Airport and Industrial Park, 10264 East Main Street, Houma; and, *Proposed Site 2* (684 acres)—Terrebonne Port, 383 Main Court Port, Houma. Both sites are owned by Terrebonne Parish with the Houma-Terrebonne Airport Commission and Terrebonne Port Commission managing each site, respectively. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

The application indicates a need for zone services in Houma/Terrebonne Parish, Louisiana. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 11, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 28, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: December 7, 2010.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010–31223 Filed 12–10–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–816]**

### Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

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

**FOR FURTHER INFORMATION CONTACT:** Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone (202) 482–3797.

**Background**

On September 22, 2009, the U.S. Department of Commerce (Department) published a notice of initiation of the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, covering the period August 1, 2008, to July 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009).

On September 14, 2010, the Department published the preliminary results of this review. *See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review*, 75 FR 55769 (September 14, 2010). The final results of this review are currently due no later than January 12, 2011.

**Extension of Time Limit of the Final Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of a review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit because we scheduled post-preliminary results verifications, which we just completed and have not yet issued the verification reports. Therefore, the Department is fully extending the time limit for the final results. The final results are now due no later than March 13, 2011. As that day falls on a Sunday, the final results are due no later than March 14, 2011. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant of the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2010.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–31217 Filed 12–10–10; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council and Extension of Application Deadline

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice and request for applications and extension of deadline.

**SUMMARY:** The ONMS is seeking applications for the following vacant seats on the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Honolulu County (primary only), Research (alternate only), Commercial Shipping, Whale Watching, Ocean Recreation, Business/Commerce, Citizen-at-Large, Conservation, Tourism, Lanai Island Representative, and Molokai Island Representative. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's charter.

**DATES:** Applications are due by 15 January 2011.

**ADDRESSES:** Application kits may be obtained from Joseph Paulin, 6600

Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov*. Completed applications should be sent to the same address. Applications are also available online at *http://hawaiihumpbackwhale.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joseph Paulin, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov* or 808–397–2651 x 257.

**SUPPLEMENTARY INFORMATION:** The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the management of the sanctuary. Since its establishment, the council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The council's seventeen voting members represent a variety of local user groups, as well as the general public.

The council is supported by four committees: An Executive Committee chaired by the Sanctuary Advisory Council Chair, a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The council represents the coordination link between the sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the sanctuary management and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The council works in concert with the sanctuary management by keeping him or her informed about issues of concern throughout the sanctuary, offering recommendations on specific issues, and aiding in achieving the goals of the sanctuary within the context of marine programs and policies of Hawaii.

**Authority:** 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 1, 2010.

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2010–31180 Filed 12–10–10; 8:45 am]

**BILLING CODE 3510–NK–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XP18**

**[File No. 14334]**

### Marine Mammals

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

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664 (Dr. Ian Dutton, Responsible Party), has applied for an amendment to Scientific Research Permit No. 14334.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before January 12, 2011.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14334 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Tammy Adams, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 14334 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14334, issued on August 17, 2009 (74 FR 44822), authorizes the permit holder to investigate reproductive physiology of adult Steller sea lions (*Eumetopias jubatus;* permanently captive, eastern stock) and survival, growth, and physiology of captive-bred offspring. They may also deploy biotelemetry instruments on the captives to develop and validate methods for monitoring wild Steller sea lions. The permit authorized two mortalities of captive animals over the duration of the permit. Two mortalities have occurred: A pregnant adult female and a near-term fetus. The permit holder is requesting the permit be amended to allow for two more mortalities of captive sea lions for the duration of the permit, which expires on August 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 7, 2010.

**Tammy C. Adams,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–31221 Filed 12–10–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice Requesting Nominations for the Marine Protected Areas Federal Advisory Committee

**AGENCY:** National Marine Protected Areas Center, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice requesting nominations for the Marine Protected Areas Federal Advisory Committee.

**SUMMARY:** The Department of Commerce is seeking nominations for membership on the Marine Protected Areas Federal Advisory Committee (Advisory Committee). The Advisory Committee was established to advise the Secretary of Commerce and the Secretary of the Interior in implementing Section 4 of Executive Order 13158, specifically on strategies and priorities for developing the national system of marine protected areas (MPAs) and on practical approaches to further enhance and expand protection of new and existing MPAs.

Nominations are sought for highly qualified non-Federal scientists, resource managers, and people representing other interests or organizations involved with or affected by marine conservation including in the Great Lakes. Six members of the Committee have terms that expire October 31, 2011, and nominations are sought to fill these vacancies.

Individuals seeking membership on the Advisory Committee should possess demonstrable expertise in a related field or represent a stakeholder interest affected by MPAs. Nominees also will be evaluated based on the following factors: marine policy experience, leadership and organization skills, region of country represented, and diversity characteristics. The membership reflects the Department's commitment to attaining balance and diversity. The full text of the Advisory Committee Charter and its current membership can be viewed at the Agency's Web page at *http://mpa.gov*.

**DATES:** Nominations must be postmarked on or before February 15, 2011.

**ADDRESSES:** Nominations should be sent to: Kara Yeager, National Marine Protected Areas Center, NOAA, 1305 East West Highway, Rm 9136, Silver Spring, MD 20910. E-mail: *Kara.Yeager@noaa.gov*. E-mail nominations are acceptable.

**FOR FURTHER INFORMATION CONTACT:** Kara Yeager, National Marine Protected Areas Center, 1305 East-West Highway, Building 4, Station 9136, 301–713 3100 ext. 162. *Kara.Yeager@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** In Executive Order 13158, the Department of Commerce and the Department of the Interior were directed to seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested people and organizations through a Marine Protected Areas Federal Advisory Committee. The Advisory Committee was established in June 2003 and currently includes 30 members. Effective October 31, 2011, the Committee size will be decreased to 20 members.

The Committee meets at least once annually. Committee members serve for one, four-year nonrenewable term. Members of the Committee will not be compensated, but may, upon request, be allowed travel and per diem expenses.

Each nomination submission should include the proposed member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Advisory Committee, a curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: the nominee's name, address, phone number, fax number, and e-mail address if available.

Dated: December 3, 2010.

**Donna Wieting,**

*Director, Office of Ocean and Coastal Resource Management.*

[FR Doc. 2010–31187 Filed 12–10–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XZ83**

### Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an Incidental Harassment Authorization (IHA) to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF–OBB) in California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to CALTRANS to incidentally harass, by Level B Harassment only, four species of marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than January 12, 2011.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.0648–XZ803@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the renewal request may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

On July 8, 2010, CALTRANS submitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF–OBB, in San Francisco Bay (SFB), California. An IHA was previously issued to CALTRANS for this activity on August 14, 2009 and it expired on August 13, 2010 (74 FR 41684, August 18, 2009). In its renewal request, CALTRANS states that it has not scheduled any in-water pile driving for the 2010–2011 construction year. However, CALTRANS states that due to the possibility of unforeseen construction changes, it is important for CALTRANS to maintain a current IHA during SF–OBB Project construction operations. In addition, CALTRANS stated that should construction schedule changes necessitate the installation of in-water piles, these would be small diameter temporary piles like the ones they conducted in the 2009–2010 season, ranging from 0.3 m (18 in) to 1.2 m (48 in). A detailed description of the SF–OBB 2009–2010 construction work was provided in the August 18, 2009 (74 FR 41684) **Federal Register** notice of issuance of the IHA and is not repeated here. The following is a brief summary of CALTRANS 2009–2010 activities.

CALTRANS 2009–2010 pile driving activities for 2009–2010 construction included driving the 42–48 in (1.1–1.2 m) diameter temporary piles, as opposed to the much larger 5.9–8.2 ft (1.8–2.5 m) diameter permanent piles they used to conduct in the past. Therefore, the noises from pile driving of these temporary piles are far less than from previous pile driving activities. However, CALTRANS indicates that deployment of an air bubble curtain would not be feasible for the driving of these smaller temporary piles due to the complexity of the driving frames. In addition, in the 2009–2010 construction season, certain piles were installed by using both vibratory and impact hammers, instead of only impact hammers as in the past.

Empirical hydroacoustic measurements of impact and vibratory hammers during CALTRANS testing pile driving in San Francisco Bay on October 23, December 9, and December 11, 2008, are shown in Table 1. Hydroacoustic monitors used data collected on December 9 and December 11, 2008, determine the distance of the 120 dB isopleths. At 1,900 m from the vibratory pile driving, sound levels are in the low 120 dB root-mean-squared (rms) range. At this distance pile driving was audible but not measurable due to ambient noise (CALTRANS, 2009).

If in-water pile driving is to be conducted, prior collected hydroacoustic data showed that the vibration of the bottom segment of each pile took approximately 3 minutes; the vibration of the top segment of each pile took approximately 8 minutes; and the impact driving of the top segment of each pile lasted an average of 15 minutes. On average, it took about 25 minutes of driving time to install each temporary pile (CALTRANS, 2009).

TABLE 1—ROOT-MEAN-SQUARE ISOPLETHS BASED ON HYDROACOUSTIC MONITORING IN SAN FRANCISCO BAY BY ILLINGWORTH & RODKIN, INC. (CALTRANS, 2009)

| Sound level (dB-rms re 1 μPa) | 120* | 160** | 180** | 190** |
|---|---|---|---|---|
| Radius for Vibratory Pile Driving | 1,900 m | 250 m | 15 m | does not exist. |
| Radius for Impact Pile Driving | NA | 1,000 m | 235 m | 95 m. |

* Hydroacoustic measurements for received level at 120 dB (rms) re 1 μPa from vibratory pile driving were collected on December 9 and 11, 2008.

** Hydroacoustic measurements for received levels at 160, 180, and 190 dB (rms) re 1 μPa from vibratory pile driving were collected on October 23, 2008.

Since the proposed SF–OBB construction project would be installing smaller temporary piles with no air bubble curtain, and since the pile driving activities would be performed by using both impact and vibratory hammers, NMFS conducted an comparison of isopleths from CALTRANS' large foundation pile driving activities using an air bubble curtain system (Table 2) with the current testing pile driving without an air bubble curtain by both impact and vibratory pile driving (Table 1). The acoustic data used from the foundation

pile driving were provided by CALTRANS (CALTRANS 2005). The comparison shows that the radius for the zone of influence (ZOI) for Level B behavioral harassment, as defined by marine mammals exposed to received impulse sound pressure level (SPL) of 160 dB (rms) re 1 µPa, for the previous larger pile driving activities using air bubble curtain was about 2,000 m (*see* further discussion on potential impacts to marine mammals below). This distance is approximately the same as the radius for the proposed vibratory pile driving for the smaller temporary piles at received SPL of 120 dB (rms) re 1 µPa, a level thought may cause Level B behavioral harassment to marine mammals by vibratory pile driving. Therefore, NMFS concludes that the potential impacts to marine mammals from the proposed SF–OBB construction project involving installation of smaller temporary piles using both impact and vibratory hammers without deployment of an air bubble curtain system are the same as the previous construction activities of installation larger foundation piles using impact hammers and air bubble curtain system as a mitigation measure. Pile driving is expected to occur during daylight hours only, as in the previous IHAs.

TABLE 2—SUMMARY OF HYDROACOUSTIC MEASUREMENTS REPORTED AS dB RE 1 µPA—PIER E3W MARINE MAMMAL HYDROACOUSTIC CHARACTERIZATION, 10/13/2004 (ADOPTED FROM CALTRANS, 2005)

| Position | Water Depth | South Pile Hammer: Menck 1,700 | | North Pile Hammer: Menck 1,700 | |
|---|---|---|---|---|---|
| | | RMS impulse | Peak | RMS impulse | Peak |
| 50m West (made by Caltrans)* | — | 177 | 186 | | |
| 100m West* | ~12–14m | 175 | 185 | 173 | 182 |
| 100m North | ~12m | 174 | 183 | | |
| 100m South** | ~12m | ..... | ..... | 174 | 182 |
| 500m West | ~8m | 174 | 182 | | |
| 500m South | ~10m | 167 | 177 | 177 | 188 |
| 1000m North | 14m | ..... | ..... | 169 | 178 |
| 1000m South | ~10m | 169 | 176 | | |
| 2000m North | 11m | ..... | ..... | 162 | 169 |
| 2000m South | ~10m | <140 | <150 | | |
| 4400m North | >12m | ..... | ..... | <130 | <150 |
| 4400m South | >12m | <130 | <150 | | |

*Continuous measurement. All others are spot measurements of at least 5 minutes in duration.
**Many obstructions including Pier E3E.

**Description of Marine Mammals in the Area of the Specified Activity**

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2010), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2009.pdf*. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF–OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF–OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

**Potential Effects on Marine Mammals and Their Habitat**

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1 µPa @ 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 µPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 $\mu Pa^2$-s) in the aforementioned experiment (Finneran *et al.* 2002).

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Based on the best scientific information available, these sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF–OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.*, Clark *et al.* 2009) and cause increased stress levels (*e.g.*, Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, and dredging activities, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed SF–OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF–OBB construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μPa at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa for continued noises (vibratory pile driving and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

**Estimated Take by Incidental Harassment**

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' annual monitoring reports (CALTRANS 2007; 2010) and marine mammal observation memoranda under the previous IHAs, the proposed construction would result in harassment of only small numbers of marine mammals and would not result in more than a negligible impact on marine mammal stocks and their habitat. This was achieved by implementing a variety of monitoring and mitigation measures including marine mammal monitoring before and during pile driving, establishing safety zones, and ramping up pile driving.

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving activities associated with the SF–OBB construction work authorized under prior IHAs. For pile driving activities conducted in 2006, 5 harbor seals and no other marine mammals were detected within the isopleths of 160 dB (rms) re 1 microPa during impact pile driving where air bubble curtains were deployed for mitigation measures (radius of ZOI at 500 m) (CALTRANS 2007). For pile driving activities conducted in the 2008 and 2009 seasons, CALTRANS monitored a much

larger ZOI of 120 dB (rms) re 1 microPa as a result of vibratory pile driving. A total of 11 harbor seals and 1 California sea lion were observed entering the 120 dB (rms) re 1 microPa ZOI (CALTRANS). However, despite the ZOI being monitored extended to 1,900 m for the 120 dB isopleths, CALTRANS did not specify which pile driving activities conducted in 2008 and 2009 used impact hammer and which ones used vibratory hammer. Therefore, at least some of these animals were not exposed to received level above 160 dB (rms) re 1 microPa, thus should not be considered as "taken" under the MMPA. No harbor porpoise or gray whale were observed during CALTRANS' pile driving activities since 2006 (CALTRANS 2007; 2010).

Based on these results, in addition to CALTRANS' expectation that very limited pile driving activities would be conducted in the next season, NMFS proposes that at maximum 10 harbor seals, 2 California sea lions, 5 harbor porpoises, and 1 gray whale could be exposed to noise levels above 120 dB by vibratory pile driving.

Marine Mammal Monitoring Report From Previous IHA

As mentioned above, marine mammal monitoring during CALTRANS' pile driving activities and weekly marine mammal observation memorandums (CALTRANS 2007; 2010) indicate that only a small number of harbor seals (a total of 16 individuals since 2006) and 1 California sea lion (a total of 1 individual in 2009) were observed within ZOIs that could result in behavioral harassment. However, the reports state that none of the animals were observed to seen been startled by the exposure, which could be an indication that these animals were habituated to human activities in San Francisco Bay. In addition, no harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work.

**Proposed Mitigation Measures**

NMFS proposes the following mitigation measures for CALTRANS' SF–OBB construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable if in-water pile driving would be conducted.

*Establishment of Safety/Buffer Zones*

CALTRANS conducted underwater acoustic measures during temporary pile driving using impact hammers conducted under the previous IHA (CALTRANS 2010). The measurements showed that the distance to the 190 dB (rms) re 1 µPa isopleths ranged from 50 m (164 ft) to 150 m (492 ft), and the distance to the 180 dB (rms) re 1 µPa isopleths ranged from 375 m (1,230 ft) to 500 m (1,640 ft) at different locations. NMFS proposes to use the most conservative measurements for the establishment of safety zones at 500 m (1,640 ft) for pinnipeds and at 150 m (492 ft) for cetaceans. These safety zones shall be monitored at all times when impact pile driving is underway.

No safety zone would be established for vibratory pile driving since the measured source levels will not exceed the 180 and 190 dB re 1 µPa.

Observers on boats would survey the safety zone to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the safety zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes and if no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995).

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

*Soft Start*

It should be recognized that although marine mammals will be protected from Level A harassment (*i.e.*, injury) through marine mammal observers monitoring a 190-dB safety zone for pinnipeds and 180-dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS would also "soft start" the hammer prior to operating at full capacity. CALTRANS typically implements a "soft start" with several initial hammer strikes at less than full capacity (*i.e.*, approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor would initiate pile driving hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

*Compliance With Equipment Noise Standards*

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment shall comply with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment shall have noise control devices no less effective than those provided on the original equipment.

**Proposed Monitoring Measures**

The following monitoring measures are proposed for CALTRANS' SF–OBB construction activities if in-water pile driving would be conducted.

Safety zone monitoring would be conducted during driving of all in-water piles. Monitoring of the pinniped and cetacean safety zones shall be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team would be required for the safety zones around each pile driving site, so

that multiple teams would be required if pile driving is occurring at multiple locations at the same time. The observers would begin monitoring at least 30 minutes prior to startup of the pile driving. Most likely observers would conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF–OBB) are not practical. Pile driving should not begin until the safety zones are clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations would continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (*see* Mitigation). Monitoring should continue through the pile driving period and would end approximately 30 minutes after pile driving has been completed. Biological observations would be made using binoculars during daylight hours.

In addition to monitoring from boats, during in-water pile driving, monitoring at one control site (*i.e.*, harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, *e.g.*, Mowry Slough) would be designated and monitored for comparison. Monitoring would be conducted twice a week at the control site whenever in-water pile driving is being conducted. Data on all observations would be recorded and should include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals would be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, *see* 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction should be recorded, as well as the time when seals re-haul after a flush.

**Proposed Reporting Measures**

Under previous IHAs, CALTRANS submitted weekly marine mammal monitoring reports for the time when in-water pile driving was commenced. In June 2010, CALTRANS submitted the Marine Mammal Monitoring for the Self-anchored Suspension Span Temporary Tower, which also includes hydroacoustic measurements during both impact and vibratory pile driving. The report is available by contacting NMFS (*see* **ADDRESSES**).

Under the proposed IHA, coordination with NMFS would occur on a weekly basis. During periods with in-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at *http://biomitigation.org*. These weekly reports would include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS would provide NMFS with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS within 30 days, the draft final report would be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

**Negligible Impact and Small Numbers Analysis and Determination**

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The CALTRANS' specified activities have been described based on best estimates of the planned SF–OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction project, such as impact pile driving, are high intensity. However, the in-water pile driving for the test piles, if conducted, would use small hammers and/or vibratory pile driving methods, therefore the resulting safety zones for potential TS are expected to be small and can be easily monitored to ensure no marine mammals are within the zones when pile driving starts. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with SF–OBB construction project.

Based on marine mammal monitoring reports under previous IHAs, only 16 harbor seals and 1 California sea lion were observed within the 120 dB (in 2008 and 2009) or 160 dB (in 2006) ZOIs during in-water pile driving since 2006. NMFS proposes that up to 10 harbor seals, 2 California sea lions, 5 harbor propoises, and 1 gray whale could be exposed to received levels above 120 dB (rms) during vibratory pile driving or 160 dB (rms) during impact pile driving for the next season of construction activities if pile driving frequency would be kept at 2008–2009 level. These are small numbers, representing 0.03% of the California stock of harbor seal population (estimated at 34,233; Carretta *et al.* 2010), 0.00% of the U.S. stock of California sea lion population (estimated at 238,000; Carretta *et al.* 2010), 0.05% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,181; Carretta *et al.* 2010), and 0.01% of the Eastern North Pacific stock of gray whale population; Allen and Angliss 2010).

Animals exposed to construction noise associated with the SF–OBB construction work would be limited to

Level B behavioral harassment only, *i.e.*, the exposure of received levels for impulse noise between 160 and 180 dB (rms) re 1 µPa (from impact pile driving) and for non-impulse noise between 120 and 180 dB (rms) re 1 µPa (from vibratory pile driving). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration.

These low intensity, localized, and short-term noise exposures (*i.e.*, 160 dB re 1 µPa (rms) from impulse sources and 120 dB re 1 µPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed SF–OBB construction project are not expected to affect marine mammal annual rates of recruitment or survival. The average measured 160 dB isopleths from impact pile driving is 1,000 m from the pile, and the estimated 120 dB isopleths from vibratory pile driving is approximately 1,900 m from the pile.

For the reasons discussed in this document, NMFS has preliminarily determined that the impact of in-water pile driving associated with construction of the SF–OBB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF–OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoise, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. The activity will not have an unmitigable adverse impact on subsistence uses of marine mammals described in MMPA section 101(a)(5)(D)(i)(II).

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action.

**National Environmental Policy Act (NEPA)**

NMFS' prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF–OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (*see* **ADDRESSES**).

**Endangered Species Act (ESA)**

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF–OBB in California. Anadromous salmonids are the only listed species which may be affected by the project. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF–OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected.

NMFS proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. There is no ESA-listed marine mammal species in the proposed action area, therefore, NMFS has determined that issuance of an IHA for this activity will have no effect on any listed marine mammal species.

**Proposed Authorization**

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Dated: December 7, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–31214 Filed 12–10–10; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, December 15, 2010, 10 a.m.–12 Noon.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public

**Matter To Be Considered**

*Decisional Matter:* Full-Sized and Non-Full-Sized Cribs—Final Rules.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast*. For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: December 7, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–31350 Filed 12–9–10; 4:15 pm]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, December 15, 2010; 2 p.m.—3 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**Matter To Be Considered**

*Compliance Status Report*

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: December 7, 2010.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2010–31351 Filed 12–9–10; 4:15 pm]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Grant an Exclusive License for U.S. Army Owned Inventions to Polymer Processing Institute

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army announces that, unless there is an objection, after 15 days it contemplates granting an exclusive license to Polymer Processing Institute, a not-for-profit corporation having a place of business in the New Jersey Institute of Technology Campus in Newark, New Jersey, to produce the following inventions:

- ARDEC Reference 2006–043, and U.S. patent application 12/483420—"Foamed Celluloid Mortar Propellant Increment Containers"—Inventors Ming-Wan Young, Costas G. Gogos; Niloufar Faridi; Linjie Zhu; Peter Bonnett; Howard Shimm; Elbert Caravaca; Joseph Palk.
- ARDEC Reference 2006–043 continuation (disclosure)—"Foamed Celluloid and Applications Therefor".
- ARDEC Reference 2009–014 (disclosure)—"Prepare Foamed Energetic Material at a High Production Rate"—Inventors Linjie Zhu; Fei Shen; Ming-wan Young; Costas G. Gogos; Chong Peng; Mohamed Elalem; Joseph Palk; Howard (Howie) Shimm, Dale Conti; Elbert Caravaca; Peter Bonnett.
- ARDEC Reference 2009–015 (disclosure)—"Prepare Foamed Energetic Material by Expandable Bead Methodology"—Inventors Niloufar Faridi; Linjie Zhu; Ming-wan Young; Costas G. Gogos; Kuanyin Lin; Mohamed Elalem; Joseph Palk; Elbert Caravaca; Dale Conti.

Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**DATES:** File written objections by December 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy S. Ryan, Technology Transfer Program Manager, RDAR–EIB, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, e-mail: *timothy.s.ryan@us.army.mil;* (973) 724–7953.

**SUPPLEMENTARY INFORMATION:** Written objections must be filed within 15 days from publication date of this notice in the **Federal Register.** Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2010–31174 Filed 12–10–10; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovation Research Program (SBIR)—Phase I; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

*Dates:*

*Applications Available:* December 13, 2010.

*Deadline for Transmittal of Applications:* February 11, 2011.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of the U.S. Department of Education (Department) supported research results, and improve the return on investment from Federally funded research for economic and social benefits to the Nation.

**Note:** This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. 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: *http://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 to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

*NIDRR Supports Manufacturing-Related Innovation (Executive Order 13329)*

Executive Order 13329 states that continued technological innovation is critical to a strong manufacturing sector in the United States economy and ensures that Federal agencies assist the private sector in its manufacturing innovation efforts. The Department's SBIR program encourages innovative research and development (R&D) projects that are manufacturing-related, as defined by Executive Order 13329. Manufacturing-related R&D encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems. The projects supported under the Department's SBIR program encompass a range of manufacturing-related R&D, including projects leading to the manufacture of such items as artificial intelligence or information technology devices, software, and systems. For more information on Executive Order 13329, please visit the following Web site: *http://www.sba.gov/sbir/execorder.html* or contact Lynn Medley at: *lynn.medley@ed.gov.*

*Background*

The Small Business Reauthorization Act of 2000 (Act) was enacted on December 21, 2000. The Act requires certain agencies, including the Department, to establish SBIR programs by reserving a statutory percentage of their extramural R&D budgets to be awarded to small business concerns through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

*Phase I:* Phase I projects determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. An application for Phase I should concentrate on research that will contribute significantly to proving the scientific or technical feasibility of the

approach or concept. Scientific or technical feasibility is a prerequisite to the Department's provision of further support in Phase II. Phase I awards are for a period of up to six months in an amount up to a maximum total of $75,000.

*Phase II:* Phase II projects expand on the results of and further pursue the development of Phase I projects. Phase II is the principal R/R&D effort of the SBIR program. Applications for Phase II projects must be more comprehensive than applications for Phase I projects; Phase II applications must outline the proposed effort in detail, including the commercial potential of projects or processes developed or researched during the Phase I project. Phase II applicants must be Phase I grantees with approaches that appear sufficiently promising as a result of their efforts in Phase I. Phase II awards are for periods of up to two years in amounts up to a maximum total of $500,000 over a period of two years.

*Phase III:* In Phase III, the small business grantee must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities and their families. (*See* 29 U.S.C. 762). Activities may include: Conducting manufacturing-related R&D that encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems; exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities; and improving the quality and utility of disability and rehabilitation research.

*Priorities:* Under this competition we are particularly interested in applications that address one of the following five priorities.

*Invitational Priorities:* For FY 2011 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

Each of the following priorities relate to innovative research utilizing new technologies to address the needs of individuals with disabilities and their families. Applicants who choose to respond to one of the invitational priorities must propose projects whose activities contribute to one of the following priorities:

(1) Increased independence of individuals with disabilities in the workplace, recreational settings, or educational settings through the development of technology to support access and promote integration of individuals with disabilities.

(2) Enhanced sensory or motor function of individuals with disabilities through the development of technology to support improved functional capacity.

(3) Enhanced workforce participation through the development of technology to support access to employment, promote sustained employment, and promote employment advancement for individuals with disabilities.

(4) Enhanced community participation and living for individuals with disabilities through the development of accessible information technology including Web access technology, software, and other systems and devices that promote access to information in educational, employment, and community settings, and voting technology that improves access for individuals with disabilities.

(5) Improved interventions and increased use of health-care resources through the development of technology to support independent access to health-care services in the community for individuals with disabilities.

Applicants should describe the approaches they expect to use to collect empirical evidence demonstrating the effectiveness of the technology they are proposing. This empirical evidence should facilitate the assessment of the efficacy and usefulness of the technology.

**Note:** NIDRR encourages applicants to adhere to universal design principles and guidelines. The term "universal design" is defined as "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" (The Center for Universal Design, 1997). Universal design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products. (For more information *see http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*).

**Program Authority:** The Small Business Act, Pub. L. 85–536, as amended (15 U.S.C. 631 and 638), and title II of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760, *et seq.*).

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, and 97.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $111,919,000 for NIDRR for FY 2011, of which we intend to use an estimated $1,125,000 for the SBIR Phase I competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

**Note:** The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, minus prior commitments for Phase II continuation awards.

*Estimated Range of Awards:* $70,000–$75,000.

*Estimated Average Size of Awards:* $75,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $75,000 for a single budget period of up to six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The maximum award amount includes direct and indirect costs and fees.

*Estimated Number of Awards:* 15.

**Note:** The Department is not bound by any estimates in this notice.

*Maximum Project Period:* We will reject any application that proposes a project period that exceeds a single budget period of up to six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

## III. Eligibility Information

1. *Eligible Applicants:* Entities that are, at the time of award, small business concerns as defined by the Small Business Administration (SBA). This definition is included in the application package.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination that the applicant is eligible under its definition of small business concern.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas

listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee. For Phase I projects, at least two-thirds of the research and/or analytic activities must be performed by the proposing small business concern grantee.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* The total of all consultant fees, facility leases or usage fees, and other subcontracts or purchase agreements may not exceed one-third of the total funding 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: *http://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), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) 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. You must limit the application narrative (Part III) to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letters of support; related application or award; or documentation of multiple Phase II awards, if applicable. However, the page limit does apply to all of the application project narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III project narrative; resume of staff; and other related materials, if applicable.

3. *Content Restrictions:* If an applicant chooses to respond to more than one invitational priority, we request that the applicant submit a separate application for each priority. There is no limitation on the number of different applications that an applicant may submit under this competition. An applicant may submit separate applications for different priorities or different applications under the same priority.

Applicants should consult NIDRR's Long-Range Plan when preparing their applications. The Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics.

4. *Submission Dates and Times:*

*Applications Available:* December 13, 2010.

*Deadline for Transmittal of Applications:* February 11, 2011.

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. 8. *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.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *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), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR 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 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 CCR registration on an annual basis. This may take three or more business days to complete.

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 in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

8. *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 SBIR Program, CFDA number 84.133S–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://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 e-mail 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 SBIR Competition at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.133, not 84.133S).

**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 homepage at *http://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 attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF file 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 e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability

of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, 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 84.133S–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 84.133S–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 75.210 of EDGAR 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, 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). 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 *http://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 review of grantee performance and products. Each year, NIDRR examines a portion of its SBIR grantees to determine—

• The percentage of NIDRR-funded grant applications that receive an average peer review score of 85 or higher.

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: *http://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:* Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a TDD, 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 computer diskette) 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, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 8, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–31191 Filed 12–10–10; 8:45 am]

BILLING CODE 4000–01–P

---

## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Advanced Rehabilitation Research Training (ARRT) Projects Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133P–1.

**DATES:** *Applications Available:* December 13, 2010.

*Deadline for Transmittal of Applications:* February 11, 2011.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The purpose of this program is to provide research training and experience at an advanced level to individuals with doctorates, or similar advanced degrees, who have clinical or other relevant experience. ARRT projects train rehabilitation researchers, including researchers with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act of 1973, as amended (Act), and that improve the effectiveness of services authorized under the Act.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 350.12 and 350.64 through 350.65).

*Absolute Priority:* For FY 2011, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

**Advanced Rehabilitation Research Training Projects**

ARRT projects must (1) recruit and select candidates for advanced research training; (2) provide a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific research methodology, and may involve collaboration among institutions; (3) provide research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum experience that involves each trainee in clinical research and in practical activities with organizations representing individuals with disabilities; (4) provide academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions; and (5) provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings, as appropriate for the individual's field of study and level of experience.

It is expected that applicants will articulate goals, objectives, and expected outcomes for the research training activities. Applicants should describe expected public benefits of these training activities, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators for determining that results have occurred. Submission of this measurement information is voluntary, except where

required by the selection criteria listed in the application package.

A grantee for an ARRT project must provide training to individuals for at least one academic year, unless a longer training period is necessary to ensure that each trainee is qualified to conduct independent research upon completion of the course of training.

Trainees under an ARRT project must devote at least 80 percent of their time to the activities of the training program during the training period.

**Note:** This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. 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: *http://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 to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

**Program Authority:** 29 U.S.C. 762(k).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $111,919,000,000 for NIDRR for FY 2011, of which we intend to use an estimated $600,000 for the ARRT competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Range of Awards:* $147,000 to $150,000.

*Estimated Average Size of Awards:* $150,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** Consistent with 34 CFR 75.562, indirect cost reimbursement for a training grant is limited to eight percent of a modified total direct cost base, defined as total direct costs less stipends, tuition and related fees, and capital expenditures of $5,000 or more.

*Estimated Number of Awards:* 4.

**Note:** The Department is not bound by any estimates in this notice.

*Maximum Project Period:* We will reject any application that proposes a project period exceeding 60 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

## III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education.

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: *http://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), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133P–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) 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 75 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application project narrative section (Part III).

Applicants should consult NIDRR's Long-Range Plan when preparing their applications. The Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics.

3. *Submission Dates and Times:*

*Applications Available:* December 13, 2010.

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 January 3, 2011. 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, U.S. Department of Education, Potomac Center Plaza (PCP), Room 5133, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov*.

*Deadline for Transmittal of Applications:* February 11, 2011.

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 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, 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), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR 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 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 CCR registration on an annual basis. This may take three or more business days to complete.

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 in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/GrantsgovRegistrationBrochure.pdf*).

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 ARRT Projects program, CFDA Number 84.133P–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://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 e-mail 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 ARRT Projects at www.Grants.gov. You must search for the downloadable application package for this program by CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.133, not 84.133P).

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 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 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 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 homepage at *http://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: 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 attach any narrative sections of your application as files in PDF (Portable Document) format only. If you upload a file type other than a .PDF file 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 e-mail. 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 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 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 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

*and*

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: 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 84.133P–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 84.133P–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 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, 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). 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 *http://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 review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the ARRT Projects program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) to assess performance. NIDRR also determines, using information submitted as part of the grantees' APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site:*http://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:** Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a TDD call the Federal Relay Service, 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 computer diskette) 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, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 8, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–31192 Filed 12–10–10; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0990; FRL–8857–3]

## Approval of Test Marketing Exemptions for Certain New Chemicals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–09–03; TME–09–06; TME–09–07; TME–09–12; TME–10–01; TME–10–06; TME–10–08; TME–10–09. The test marketing conditions are described in the TME applications and in this notice.

**DATES:** Approval of these TMEs is effective December 7, 2010.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Adella Underdown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9364; fax number: (202) 564–9490; e-mail address: *underdown.adella@epa.gov.*

*For general information contact:* The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME applications to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2010–0990. All documents in the docket are listed in the docket index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

### III. What action is the agency taking?

EPA has approved the TMEs listed in this notice. EPA has determined that test marketing these new chemical substances, under the conditions set out in each TME application and in this notice, will not present any unreasonable risk of injury to human health or the environment.

### IV. What restrictions apply to these TMEs?

The test market time period, production volume, number of customers, and use must not exceed specifications in the applications and this notice. All other conditions and restrictions described in the applications and in this notice must also be met.

*TME–09–0003.*
*Date of Receipt:* January 27, 2009.
*Notice of Receipt:* April 13, 2009 (74 FR 16857) (FRL–8406–5).
*Applicant:* Cytec Industries, Inc.
*Chemical:* Phenol, polymer with formaldehyde, Bu ether.
*Use:* (G) Coatings resin.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI.

*TME–09–0006.*
*Date of Receipt:* March 16, 2009.
*Notice of Receipt:* April 17, 2009 FR (74 FR 17856) (FRL–8408–8).
*Applicant:* Cytec Industries, Inc.
*Chemical:* (G) Polymeric substituted carbomonocycle polymer with alkylthiol, substituted carbomonocycles, and alkyl acrylate-blocked.
*Use:* (G) Coatings resin.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI.

*TME–09–0007.*
*Date of Receipt:* March 16, 2009.
*Notice of Receipt:* April 17, 2009 (74 FR 17856) (FRL–8408–8).
*Applicant:* Cytec Industries, Inc.
*Chemical:* (G) Aromatic epoxy diacrylate, polymer with diisocyanate, alkylthiol and substituted carbomonocycles.
*Use:* (G) Coatings resin.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI.

*TME–09–0012.*
*Date of Receipt:* May 29, 2009.
*Notice of Receipt:* July 16, 2009 (74 FR 34568) (FRL–8427–8).
*Applicant:* Cytec Industries, Inc.
*Chemical:* (G) Epoxidized fatty acid, polymer with organic acids and alcohols compd. with amine alcohol.
*Use:* (G) Polyester binding resin.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI.

*TME–10–0001.*
*Date of Receipt:* October 28, 2009.
*Notice of Receipt:* March 10, 2010 (75 FR 11404) (FRL–8814–1).
*Applicant:* PPG Industries, Inc.
*Chemical:* (G) Aromatic polyurethane.
*Use:* (G) Component of a coating.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI.

*TME–10–0006.*
*Date of Receipt:* August 17, 2010.
*Notice of Receipt:* September 22, 2010 (75 FR 57770) (FRL–8847–7).

*Applicant:* Cytec Industries, Inc.
*Chemical:* (G) Alkanoic acid ester, polymers with alkanolamine and substituted acrylate-blocked substituted polyalkylene-urethane polymer.
*Use:* (G) Coatings resin.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI.

*TME*–10–0008.
*Date of Receipt:* September 14, 2010.
*Notice of Receipt:* September 30, 2010 (75 FR 60447) (FRL–8849–5).
*Applicant:* Cytec Industries, Inc.
*Chemical:* (G) Maleated fatty oil, substituted alkanoic acid ester, ester with polyethylene glycol, compds. with alkyl alkanol amine.
*Use:* (G) Wood stain.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI days, commencing on first day of commercial manufacture.

*TME*–10–0009.
*Date of Receipt:* September 28, 2010.
*Notice of Receipt:* November 24, 2010 (75 FR 71688) (FRL–8852–1).
*Applicant:* Cytec Industries, Inc.
*Chemical:* (G) Fatty acids, polymers with substituted carbopolycycle, substituted alkylamines, substituted alkyleneoxide and glycidyl alkaonate, substituted alkanoic acid salts.
*Use:* (G) Coating resin.
*Production Volume:* CBI.
*Number of Customers:* CBI.
*Test Marketing Period:* CBI days, commencing on first day of commercial manufacture.

The following additional restrictions apply to these TMEs. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

## V. What was EPA's risk assessment for these TMEs?

EPA identified no significant human health or environmental risks for these test market substances, due to either the low toxicity of each substance or low expected exposure. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment. Many of these TMEs were submitted per the TSCA New Chemicals Sustainable Futures Voluntary Pilot Project which is designed to develop low risk chemicals; see the **Federal Register** of December 11, 2002 (67 FR 76282) (FRL–7198–6).

## VI. Can EPA change its decision on these TMEs in the future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

## List of Subjects

Environmental protection, Test marketing exemptions.

Dated: December 7, 2010.

**Greg Schweer,**

*Chief, New Chemicals Prenotice Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 2010–31215 Filed 12–10–10; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–1017; FRL–8853–4]**

## Cancellation Orders for Certain Pesticide Registrations: Ethofumesate and Monosodium Methanearsonate (MSMA); Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** EPA published a cancellation order in the **Federal Register** of July 30, 2010, concerning the voluntary cancellation of several pesticide products, one of which was Source Dynamics' ethofumesate product, EPA Reg. No. 082542–00005. This notice corrects, with respect to that product, the July 30, 2010 **Federal Register** notice and cancellation order regarding a public comment and the existing stocks provision. Additionally, EPA published a cancellation order in the **Federal Register** of July 14, 2010, concerning the voluntary cancellation of affected monosodium methanearsonate (MSMA) pesticide products. This notice corrects typographical errors in the July 14, 2010 notice and cancellation order regarding the EPA registration numbers of two Albaugh Inc., MSMA products affected by the cancellation order.

**DATES:** These corrections are effective December 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

## II. What does this corrective notice do?

This notice makes corrections to two **Federal Register** notices and Cancellation Orders as set forth below.

1. FR Doc. 2010–18773, published in the **Federal Register** of July 30, 2010 (75 FR 44954) (FRL–8837–1) is corrected as follows:

a. On page 44954, third column, the fourth sentence of the **SUMMARY**, "The Agency did not receive any comments on the notice." is corrected to read "The Agency received one comment from Bayer CropScience regarding ethofumesate product EPA Reg. No. 082542–00005. In response to this comment, the Agency has changed the existing stocks provision as it relates to EPA Reg. No. 082542–00005. The new provision, as specified in Unit VI. of this cancellation order titled "Provisions for Disposition of Existing Stocks" allows no sales or distribution of that product by the registrant. The public comment and a letter from the Agency to Source Dynamics explaining the basis for this

change are included in docket ID number EPA–HQ–OPP–2009–1017."

b. On page 44964, first column, Unit VI. is corrected to read as follows:

**VI. Provisions for Disposition of Existing Stocks**

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks products listed in Table 1 of Unit II., except EPA Reg. No. 082542–00005, Ethofumesate Technical, until August 1, 2011, which is 1 year after the publication of the cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II., except EPA Reg. No. 082542–00005, Ethofumesate Technical, until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Any sale or distribution by the registrant of existing stocks of EPA Reg. No. 082542–00005 is prohibited from July 30, 2010.

2. FR Doc. 2010–17155 published in the **Federal Register** of July 14, 2010 (75 FR 40824) (FRL–8828–5) is corrected on page 40825, in Table 1.—MSMA Product Cancellations, in the first column of Table 1, registration numbers, "42750–38" and "42750–39" are corrected to read "42750–28" and "42750–29," respectively.

**List of Subjects**

Environmental protection.

Dated: December 3, 2010.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. C1–2010–31212 Filed 12–10–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9238–1]**

### Public Information Exchange on EPA Nanomaterial Case Studies

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Public Meeting to Receive Comments and Questions and To Provide Information on EPA Nanomaterial Case Studies and Their Purpose

**SUMMARY:** EPA is announcing a public meeting to receive comments and questions on the EPA Nanomaterial Case Studies (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=230972; http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=226723*). This meeting will also afford EPA an opportunity to highlight the Nanomaterial Case Studies and how they are being used as part of an ongoing process to refine a long-term research strategy to support the comprehensive environmental assessment of nanomaterials.

All interested public parties are requested to register to attend this workshop. Space is limited, and reservations will be accepted on a first-come, first-served basis. Comments may be submitted in writing or as brief oral statements during specified periods of the meeting. EPA intends to consider all such comments in evaluating whether or how to develop further case studies and workshops on nanomaterials.

**DATES:** The Public Information Exchange Meeting on the EPA Nanomaterial Case Studies will be held on January 4, 2011, beginning at 12:30 p.m. and ending no later than 3:30 p.m. Eastern Standard Time. Written comments should be submitted to EPA by December 28, 2010.

**ADDRESSES:** The Public Information Exchange Meeting on the EPA Nanomaterial Case Studies will be held at the U.S. Environmental Protection Agency in Research Triangle Park, NC. To attend the workshop, please register no later than December 28, 2010, preferably by sending an e-mail to *NanoWorkshop@icfi.com*. Alternatively, you may register by calling Ms. Amalia Marenberg at ICF International at (919) 293–1624.

EPA welcomes public attendance at the Public Information Exchange Meeting on the EPA Nanomaterial Case Studies and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, or if you have any other questions related to this meeting, please contact Ms. Amalia Marenberg of ICF International at (919) 293–1624.

**SUPPLEMENTARY INFORMATION:**

**I. Information About the EPA Nanomaterial Case Studies and Workshops**

Engineered nanoscale materials (nanomaterials) have often been described as having at least one dimension between 1 and 100 nanometers (nm) and frequently possessing unusual, if not unique, properties that arise from their small size. Like all technological developments, nanomaterials offer the potential for both benefits and risks. The assessment of such risks and benefits requires information, but given the emergent state of nanotechnology, much remains to be learned about the characteristics and effects of nanomaterials before such assessments can be accomplished.

In its 2007 Nanotechnology White Paper (2007, p. 89), EPA included the following recommendations regarding the risk assessment of nanomaterials: (1) Develop case studies based on publicly available information on one or several intentionally produced nanomaterials, and from such case studies identify information gaps to help map areas of research that would support the risk assessment process; (2) hold a series of workshops involving a substantial number of experts from several disciplines to assist in this process.

In keeping with these recommendations, the National Center for Environmental Assessment (NCEA) in EPA's Office of Research and Development (ORD) prepared *Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and in Topical Sunscreen* [External Review Draft] (U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/057, 2009, *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=210206*), released in July 2009, and subsequently held the "Nanomaterial Case Studies Workshop: Developing a Comprehensive Environmental Assessment Research Strategy for Nanoscale Titanium Dioxide" on September 29–30, 2009, in Durham, North Carolina. A summary of the workshop may be found at: *http://www.epa.gov/osp/bosc/pdf/nano1005summ.pdf*. The summary document provides information on the design and conduct of the 2009 case studies workshop, noting that the Nanomaterial Case Studies Workshop

was held under the auspices of the EPA Board of Scientific Counselors (BOSC), an advisory committee of independent scientists and engineers established by EPA to provide advice, information, and recommendations concerning practices and programs of the Office of Research and Development, including ORD's research planning process, in accordance with provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 [*http://www.archives.gov/federal-register/laws/fed-advisory-committee*]) and related regulations. In August 2010, the BOSC provided comments on the case studies workshop (*http://www.epa.gov/osp/bosc/pdf/nano1008rpt.pdf*).

The *Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and in Topical Sunscreen* [External Review Draft] (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=210206*) was used as a starting point for the 2009 workshop. A key feature of the case studies is the comprehensive environmental assessment (CEA) framework, which takes a holistic view of specific applications of selected nanomaterials, beginning with the product life cycle and encompassing environmental fate and transport, exposure, and ecological as well as human health implications. CEA also includes a process component involving decision science methods, and this aspect of CEA was used in a workshop to identify and prioritize research or information needed to assess nanoscale titanium dioxide (nano-$TiO_2$).

It is important to note that the Nanomaterial Case Studies document and workshop were not intended to be ends in themselves, even though they may have value or be of interest in their own right. They were conceived as the first in a series of nanomaterial case studies and workshops to be used in developing and refining a long-term research strategy to support the comprehensive environmental assessment of selected nanomaterials for potential human health and ecological risks (U.S. EPA, 2009, 225004). Such a comprehensive strategy is expected to develop in an evolutionary process reflecting adjustments and modifications as additional nanomaterials are considered and new information becomes available.

The purpose of the Public Information Exchange Meeting scheduled on January 4, 2011, is to afford an opportunity for EPA to receive comments and questions and to provide information on the EPA nanomaterial case studies and associated workshops, including their purpose and rationale. The Information Exchange will be held from 12:30 p.m. to 3:30 p.m. in the Auditorium of the EPA facility in Research Triangle Park, North Carolina.

ICF International, a contractor to EPA, will conduct a separate meeting, the "ICF International Nanomaterial Case Studies Workshop: Developing a Comprehensive Environmental Assessment Research Strategy for Nanoscale Silver," at 3:45 p.m., January 4, 2011, in the same location. This workshop will be conducted with a selected set of invitee-only participants in a structured decision science process known as Nominal Group Technique (NGT), similar to the NGT process used in the 2009 workshop on nano-$TiO_2$ (*http://www.epa.gov/osp/bosc/pdf/nano1005summ.pdf*). The upcoming ICF workshop will use the EPA document *Nanomaterial Case Study: Nanoscale Silver in Disinfectant Spray* [External Review Draft] (U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–10/081, 2010, *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=226723*) as a starting point for identifying and prioritizing possible research directions related to nanoscale silver. The ICF workshop is expected to conclude by 1 p.m. on Friday, January 7, 2011. Although funded by EPA, the ICF workshop is being conducted independently of EPA so as to comply with provisions of the Federal Advisory Committee Act (FACA). The ICF workshop will be open to public observers. Persons interested in obtaining more information about the workshop conducted by ICF International or in attending as an observer are asked to e-mail *NanoWorkshop@icfi.com* or call Ms. Amalia Marenberg at (919) 293–1624. Please indicate whether you are interested in attending the EPA Public Information Exchange Meeting or the ICF International NGT Workshop or both.

### II. How To Submit Comments

The public comment period has closed for *Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and in Topical Sunscreen* [External Review Draft] (U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/057, 2009, *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=210206*), which has now been completed and posted as a final version (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=230972*). Also closed is the public comment period for *Nanomaterial Case Study: Nanoscale Silver in Disinfectant Spray* [External Review Draft] (U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–10/081, 2010, *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=226723*). However, comments on either of these documents, especially comments related to the approach used in developing the case studies and how they could be used in developing a comprehensive environmental assessment research strategy, are welcomed in connection with the EPA Public Information Exchange on the Nanomaterial Case Studies and may be used by EPA in evaluating whether or how to develop further case studies and workshops on nanomaterials. Comments may be submitted orally at specified times during the Public Information Exchange Meeting on the EPA Nanomaterial Case Studies on January 4, 2011. Comments may also be submitted in writing in advance of the meeting. Anyone who wishes to attend the meeting and/or submit comments orally or in writing should so indicate, preferably no later than December 28, 2010, by sending an e-mail to *NanoWorkshop@icfi.com* or by calling Ms. Amalia Marenberg at ICF International at (919) 293–1624.

Dated: December 7, 2010.

**Darrell A. Winner,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2010–31210 Filed 12–10–10; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2010–30283) published on page 75173 and 75174 of the issue for Thursday, December 2, 2010.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Rick E. and Kathy A. Skates, both of Polson, Montana, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Rick E. Skates and Kathy A. Skates*, both of Polson, Montana, individually, and with Scott Farley and Natalie Farley, both of Enterprise, Alabama; Richard Pedersen, Everett, Washington; and Debbie Denton, Polson, Montana, as a group acting in concert; to acquire and retain voting shares of Flathead Lake Bancorporation, Inc., and thereby

indirectly acquire and retain voting shares of First Citizens Bank of Polson, National Association, both of Polson, Montana.

Comments on this application must be received by December 17, 2010.

Board of Governors of the Federal Reserve System, December 7, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. C1–2010–31126 Filed 12–10–10; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *First Guaranty Bancshares, Inc.*, Hammond, Louisiana; to merge with Greensburg Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of Greensburg, both of Greensburg, Louisiana.

Board of Governors of the Federal Reserve System, December 7, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–31125 Filed 12–10–10; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title 11 of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| 22–NOV–10 | 20100479 | G | R.R. Donnelley & Sons Company. |
| | | G | Bowne & Co., Inc. |
| | | G | Bowne & Co., inc. |
| | 20110093 | G | Fidelity National Information Services, Inc. |
| | | G | Dr. Romesh Wadhwani. |
| | | G | Grove Holdings 2 S.a.R.L. |
| | | G | Grove Holdings US, LLC. |
| | 20110169 | G | IESI–BFC Ltd. |
| | | G | Fred Weber, Inc. |
| | | G | Weber Gas Energy, LLC. |
| | | G | Crown Excel Disposal, LLC. |
| | | G | FW Disposal South, LLC. |
| | | G | FW Disposal, LLC. |
| | 20110170 | G | Liberty Dialysis Holdings, Inc. |
| | | G | Welsh, Carson, Anderson & Stowe X, L.P. |
| | | G | RA Group Holdings, Inc. |
| | 20110172 | G | Berkshire Fund VII, L.P. |
| | | G | Carter's, Inc. |
| | | G | Carter's, Inc. |
| | 20110176 | G | Welsh, Carson, Anderson & Stowe XI, L.P. |
| | | G | FS Equity Partners V, L.P. |
| | | G | Smile Brands Group Inc. |
| | 20110180 | G | Richard and Stacey Webb. |
| | | G | Charles S. Lupe, Jr. |
| | | G | Greensport/Ship Channel Partners, LP. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | | G | Greensport Management LLC. |
| | 20110183 | G | Wellspring Capital Partners IV, L.P. |
| | | G | Estate of Robert H. Brooks. |
| | | G | Hooters of America, Inc. |
| | 20110196 | G | Barry Diller. |
| | | G | Barry Diller. |
| | | G | IAC/InterActiveCorp. |
| | 20110197 | G | Barry Diller. |
| | | G | Liberty Media Corporation. |
| | | G | IAC/InterActiveCorp. |
| | 20110199 | G | Thoma Bravo Fund IX, L.P. |
| | | G | United Parcel Service, Inc. |
| | | G | UPS Logistics Technologies, Inc. |
| 22–NOV–10 | 20110148 | G | Harbinger Capital Partners Special Situations Offshore Fund. |
| | | G | Harbinger Group Inc. |
| | 20110171 | G | Carlisle Companies Incorporated. |
| | | G | Hawk Corporation. |
| | | G | Hawk Corporation. |
| | 20110184 | G | Oracle Corporation. |
| | | G | Art Technology Group, Inc. |
| | | G | Art Technology Group, Inc. |
| | 20110187 | G | TOYOTA TSUSHO CORPORATION. |
| | | G | General Electric Company. |
| | | G | EFS Oyster Creek LP, LLC. |
| | 20110190 | G | Calera Capital Partners IV, LP. |
| | | G | William Greenblatt. |
| | | G | Sterling Infosystems, Inc. |
| | 20110191 | G | Wells Fargo & Company. |
| | | G | The A. Eugene Brockman Charitable Trust, St. John's Trust. |
| | | G | Bluepointe Holding Co. |
| | 20110193 | G | Marubeni Corporation. |
| | | G | BP p.l.c. |
| | | G | BP Exploration & Production, Inc. |
| | 20110194 | G | Tilman J. Fertitta. |
| | | G | The Hillman Company. |
| | | G | Bubba Gump Shrimp Co. Restaurants, Inc. |
| | 20110195 | G | MIP Waste Holdings, L.P. |
| | | G | Marlin HoldCo LP. |
| | | G | Marlin HoldCo LP. |
| | 20110204 | G | Marco Antonio Stefanini. |
| | | G | TechTeam Global, Inc. |
| | | G | TechTeam Global, Inc. |
| | 20110210 | G | Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft. |
| | | G | Windsor Health Group, Inc. |
| | | G | Windsor Health Group, Inc. |
| 24–NOV–10 | 20110158 | G | Fairfax Financial Holdings Limited. |
| | | G | First Mercury Financial Corporation. |
| | | G | First Mercury Financial Corporation. |
| | 20110179 | G | Achilles Holdings 1 S.A.R.L. |
| | | G | Brit Insurance Holdings N.V. |
| | | G | Brit Insurance Holdings N.V. |
| | 20110202 | G | Chesapeake Energy Corporation. |
| | | G | Energy Spectrum Partners IV LP. |
| | | G | Forrest Rig, L.L.C. |
| | 20110203 | G | John Reilly. |
| | | G | Croydon Corporation. |
| | | G | Croydon Corporation. |
| | 20110219 | G | Pinova Holdings, Inc. |
| | | G | LyondellBasell Industries N.V. |
| | | G | LyondellBasell Flavors & Fragrances, LLC |
| 26–NOV–10 | 20110157 | G | Windstream Corporation |
| | | G | ABRY Partners VI, L.P. |
| | | G | Hosted Solutions Acquisition, LLC. |
| 29–NOV–10 | 20101203 | G | TransDigm Group Incorporated |
| | | G | JLL Partners Fund V, L.P. |
| | | G | McKechnie Aerospace Holdings, Inc. |
| | 20110161 | G | Stryker Corporation |
| | | G | Boston Scientific Corporation. |
| | | G | Boston Scientific Corporation. |
| | 20110206 | G | PAI Partners S.AS. |
| | | G | Ferrovial, SA. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | | G | Swissport International A.G. |
| | 20110224 | G | Arrow Electronics, Inc. |
| | | G | Paul Milstein Revocable 1998 Trust. |
| | | G | Intechra Group, LLC. |
| | 20110226 | G | Linsalata Capital Partners Fund V, LP. |
| | | G | Whitcraft LLC. |
| | | G | Whitcraft LLC. |
| | 20110228 | G | Wynnchurch Capital Partners II, L.P. |
| | | G | Alexander P. Coleman. |
| | | G | JAC Holding Corporation. |
| | 20110233 | G | Friedman Fleisher & Lowe Capital Partners III, LP. |
| | | G | Linsalata Capital Partners Fund V, L.P. |
| | | G | Transtar Holding Company. |
| 30–NOV–10 | 20110177 | G | Sonic Healthcare Limited. |
| | | G | CBLPath Holdings Corporation. |
| | | G | CBLPath Holdings Corporation. |
| | 20110249 | G | The Williams Companies, Inc. |
| | | G | Cabot Oil & Gas Corporation. |
| | | G | Cabot Oil & Gas Corporation. |
| 01–DEC–10 | 20110189 | G | Amazon.com, Inc. |
| | | G | Hungry Machine, Inc. d/b/a Living Social |
| | | G | Hungry Machine, Inc. |
| 02–DEC–10 | 20110212 | G | Right Choice Credit Union, |
| | | G | First Service Credit Union. |
| | | G | First Service Credit Union. |
| | 20110223 | G | USPF III Leveraged Feeder, L.P. |
| | | G | Peter H. Zeliff, Sr. |
| | | G | Innovative Energy Systems, LLC. |
| | | G | In Modern Innovative Energy, LLC. |
| | | G | In Model City Energy, LLC. |
| | | G | In Zeliff Holdings, Inc. |
| | 20110230 | G | Clayton, Dubilier & Rice Fund VIII, L.P. |
| | | G | Tyco International Ltd. |
| | | G | Atkore International Group Inc. |
| | 2011244 | G | TPG VI Ontario 1 AIV, L.P. |
| | | G | MacDonald, Dettwiler and Associates Ltd. |
| | | G | Wertweiser GmbG. |
| | | G | MacDonald Dettwiler Info. Tech, Services Ltd. Liability Co. |
| | | G | MD Information Services (Luxembourg) S.A. |
| | | G | MacDonald, Dettwiler and Limited (UK). |
| | | G | MacDonald, Dettwiler and Limited (Ireland). |
| | | G | Marshall & SwiftfBoeckh (Canada) Ltd. |
| | | G | MDA Access BC Ltd. |
| | | G | MacDonald Detiwiler and Associates Corp. |
| | 20110248 | G | Rhone Partners III L.P. |
| | | G | Audax Private Equity Fund II, L.P. |
| | | G | UI Sealing Technologies Intermediate Holdings, Inc. |
| 03–DEC–10 | 20110182 | G | Berkshire Hathaway Inc. |
| | | G | Mr. Thomas E. Bernard. |
| | | G | Horizon Wine and Spirits-Nashville, Inc. |
| | | G | Horizon Wine and Spirits-Chattanooga, Inc. |
| | 20110185 | G | Excellere Partners. |
| | | G | The SV Partners Limited Partnership. |
| | | G | AxelaCare Health Solutions, LLC. |
| | 20110234 | G | Cintas Corporation. |
| | | G | Brynwood Partners V L.P. |
| | | G | Metro Door, Inc. |
| | 20110236 | G | Patricia's Trust u/t Kocourek 1994 FT u/a/d Dec 31, 1994. |
| | | G | Stonehenge Opportunity Fund, LLC. |
| | | G | Cello-Poly LLC. |
| | | G | Plastic Packaging Technologies, LLC. |
| | 20110242 | G | Linsalata Capital Partnes Fund V, L.P. |
| | | G | Cortec Group Fund III, L.P. |
| | | G | RF Medical Holdings, Inc. |
| | 20110253 | G | Summit Partners Private Equity Fund VII–A, L.P. |
| | | G | John and Susan Ocampo. |
| | | G | M/A–COM Technology Solutions Holdings, Inc. |
| | 20110263 | G | Arsenal Capital Partners QP II LP. |
| | | G | John W. Jordan, III. |
| | | G | Para-Chem Southern, Inc. |
| | 20110265 | G | Bank of America Corporation. |

TRANSACTION GRANTED EARLY TERMINATION—Continued

| ET date | Trans No. | ET req status | Party name |
|---|---|---|---|
| | | G | Powersport Auctioneer Holdings, LLC. |
| | | G | Powersport Auctioneer Holdings, LLC. |
| | 20110269 | G | Religare Enterprises Limited. |
| | | G | Landmark Partners, Inc-CT. |
| | | G | Landmark Partners, LLC. |
| | 20110273 | G | ICV Partners II, L.P. |
| | | G | Cargo Airport Services U.S.A. LLC. |
| | | G | Cargo Airport Services U.S.A. LLC. |
| | 20110275 | G | TPG Star, L.P. |
| | | G | ZS VPSI, L.P. |
| | | G | VPSI, Inc. |
| | | G | VPSI, L.L.C. |
| | 20110276 | G | Alliant Techsystems Inc. |
| | | G | Sentinel Capital Partners IV, L.P. |
| | 20110290 | G | North American Rescue, LLC. |
| | | G | Ascent Media Corporation. |
| | | G | ABRY Partners IV, LP. |
| | | G | Monitronics International, Inc. |
| | 20110298 | G | Charlesbank Equity Fund VII, Limited Partnership. |
| | | G | Behrman Capital III L.P. |
| | | G | Peacock Holding Company, Inc. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2010–31092 Filed 12–10–10; 8:45 am]

**BILLING CODE 6750–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Research Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Sagar S. Mungekar, PhD, New York University School of Medicine:* Based on the Respondent's written admission and set forth below, the New York University School of Medicine (NYUSOM) and the Office of Research Integrity (ORI) found that Sagar S. Mungekar, PhD, former MD/PhD student in the Sackler Institute of Graduate Biomedical Sciences at NYUSOM, engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grants R01 GM35769, R01 GM55624, and T32 GM07308, and National Institute of Allergy and Infectious Diseases (NIAID), NIH, grant T32 AI007180.

Dr. Mungekar admitted that in his PhD thesis he "increased statistical significance of the calculated means and standards of deviation [*sic*] of the UV spectrophometic [*sic*] data presented by discarding certain experimental data and thus presented data that was falsified. In addition, as the repression ratios calculated and conclusions reached based on these data that included falsified data, those values and conclusions are fabricated. Approximately, 60–75 of the [Respondent's] PhD research data was changed or falsified." Dr. Mungekar also admitted "while doing these experiments, I did not sequence all of the constructs that I constructed, thus, I could not be certain of the exact identity of the plasmids in question."

ORI found that Dr. Mungekar engaged in research misconduct (42 CFR 93.103) by fabricating and falsifying data. Specifically, ORI found that Dr. Mungekar falsified five tables and five figures (Tables 2–1, 2–2, 3–1, 4–1, 4–2 and Figures 2–3, 3–1, 3–2, 4–3, and 4–4) in his Ph.D. thesis entitled "Autoregulation of Ribonuclease E," by discarding certain spectrophotometric data, to increase statistical significance, used to calculate repression ratios and RNA decay rates. Dr. Mungekar also claimed to have constructed 53 different reporter plasmids with RNase E mutants, when sequencing data did not exist to support this claim.

Dr. Mungekar has entered into a Voluntary Settlement Agreement in which he has voluntarily agreed, for a period of three (3) years, beginning on November 22, 2010:

(1) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses him in any capacity on PHS-supported research, or that submits a report of PHS-funded research in which he is involved, must concurrently submit a plan for supervision of his duties to ORI for approval; the supervisory plan must be designed to ensure the scientific integrity of his research contribution; Respondent agrees that he will not participate in any PHS-supported research until such a supervision plan is submitted to ORI;

(2) that any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-funded research in which he is involved, a certification to ORI that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application or report; and

(3) to exclude himself voluntarily from serving in any advisory capacity to the U.S. Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative

Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

**John Dahlberg,**

*Director, Division of Investigative Oversight, Office of Research Integrity.*

[FR Doc. 2010–31168 Filed 12–10–10; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Priority Setting for the Children's Health Insurance Program Reauthorization Act (CHIPRA) Pediatric Quality Measures Program—Notice of Correction

On pages 75469 and 75470, Volume 75, Number 232, **Federal Register** notice publication dated December 3, 2010, under **DATES** section, the correct date is: January 14, 2011. Also, on pages 75470 and 75471, under section **SUPPLEMENTARY INFORMATION** all Web links that include the word: "ahrg" should be changed to: "AHRQ".

Dated: December 7, 2010.

**Carolyn M. Clancy,**

*Director, AHRQ.*

[FR Doc. C1–2010–31110 Filed 12–10–10; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket Number NIOSH–219]**

### Implementation of Section 2695 (42 U.S.C. 300ff–131) of Public Law 111–87: Infectious Diseases and Circumstances Relevant to Notification Requirements

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

**ACTION:** General Notice and Request for Comments.

**SUMMARY:** The Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111–87) addresses notification procedures for designated officers, medical facilities, and State and community public health officers regarding exposure of emergency response employees (EREs) to potentially life-threatening infectious diseases. The Secretary of Health and Human Services (Secretary) has delegated authority to the Director of the Centers for Disease Control and Prevention (CDC) to issue a list of potentially life-threatening infectious diseases, including emerging infectious diseases, to which EREs may be exposed in responding to emergencies (including a specification of those infectious diseases that are routinely transmitted through airborne or aerosolized means); guidelines describing circumstances in which employees may be exposed to these diseases; and guidelines describing the manner in which medical facilities should make determinations about exposures. CDC is seeking comment on the list of diseases and guidelines contained in this notice.

**DATES:** Comments must be received by February 11, 2011.

**ADDRESSES:** Comments on the content of this Notice should be in writing and addressed to:

- *E-mail:* NIOSH Docket Officer, *nioshdocket@cdc.gov*. Include "Infectious Diseases" and "42 U.S.C. 300ff–131" in the subject line of the message.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Internet:* Federal e-rulemaking portal, *http://www.regulations.gov*. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this Notice. All comments will be posted without change to *http://www.cdc.gov/niosh/docket/archive/docket219.html*, including any personal information provided. For detailed instructions on submitting comments and additional information about this process, *see* the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.cdc.gov/niosh/docket/archive/docket219.html*.

**FOR FURTHER INFORMATION CONTACT:** Centers for Disease Control and Prevention, Attention: James Spahr, Associate Director, Emergency Preparedness & Response, Office of the Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E20, Atlanta, GA 30333. Telephone (404) 498–6185 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

Public Participation
Introduction
Definitions
Part I. List of potentially life-threatening infectious diseases to which emergency response employees may be exposed.
Part II. Guidelines describing the circumstances in which such employees may be exposed to such diseases.
Part III. Guidelines describing the manner in which medical facilities should make determinations for purposes of section 2695B(d) [42 U.S.C. 300ff–133(d)].
Addendum: References

### Public Participation

Interested persons or organizations are invited to participate in this request for public comments by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this proposal. In particular, CDC invites comment on the list of infectious diseases and both sets of guidelines discussed herein.

Comments submitted by e-mail or mail should be titled "Docket #219 Public Comments," addressed to the "NIOSH Docket Officer," and identify the author(s), return address, and a phone number, in case clarification is needed. Comments can be submitted by e-mail to *nioshdocket@cdc.gov* as e-mail text or as a Microsoft Word file attachment. Printed comments can be sent to the NIOSH Docket Office at the address above. All communications received on or before the closing date for comments will be fully considered by CDC in developing a final list of infectious diseases and guidelines which will be published in the **Federal Register**.

### Introduction

The Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111–87) amended the Public Health Service Act (PHS Act, 42 U.S.C. 201–300ii), including the addition of a Part G to Title XXVI, which addresses notification procedures and requirements for medical facilities, State public health officers and their designated officers regarding exposure of EREs to potentially life-threatening infectious diseases. (*See* Title XXVI, Part G of the PHS Act, codified as amended at 42 U.S.C. 300ff–131 to 300ff–140.)

For purposes of these notification requirements, Section 2695 [42 U.S.C. 300ff–131] requires the Secretary of Health and Human Services (Secretary) to develop and disseminate:

(1) A list of potentially life-threatening infectious diseases,

including emerging infectious diseases, to which EREs may be exposed in responding to emergencies (including a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means);

(2) Guidelines describing the circumstances in which such employees may be exposed to such diseases, taking into account the conditions under which emergency response is provided; and

(3) Guidelines describing the manner in which medical facilities should make determinations for purposes of section 2695B(d) [42 U.S.C. 300ff–133(d)].[1]

On July 7, 2010, the Secretary delegated authority for Section 2695 [42 U.S.C. 300ff–131] to the Director of the CDC (75 FR 40842). This Notice includes the proposed list of diseases and guidelines developed by CDC pursuant to this delegation and in accordance with Section 2695 [42 U.S.C. 300ff–131]. CDC invites comment on the list of infectious diseases and both sets of guidelines.

**Definitions**

The following definitions are used in the list of diseases and guidelines developed pursuant to Section 2695[42 U.S.C. 300ff–131]:

*Aerosol* means tiny particles or droplets suspended in air. These range in diameter from about 0.001 to 100 μm (Baron P, accessed 2010) (Baron PA and Willeke K, 2001; 1065).

*Aerosolized transmission* means person-to-person transmission of an infectious agent through the air by an aerosol. *See* "aerosolized airborne transmission" and "aerosolized droplet transmission."

*Aerosolized airborne transmission* means person-to-person transmission of an infectious agent by an aerosol of small particles able to remain airborne for long periods of time. These are able to transmit diseases on air currents over long distances, to cause prolonged airspace contamination, and to be inhaled into the trachea and lung (Baron P, accessed 2010) (Seigel *et al.*, 2007; 18).

*Aerosolized droplet transmission* means person-to-person transmission of an infectious agent by large particles only able to remain airborne for short periods of time. These generally transmit diseases through the air over short distances (approximately 6 feet), do not cause prolonged airspace contamination, and are too large to be inhaled into the trachea and lung (Baron P, accessed 2010) (Seigel *et al.*, 2007; 17).

*Contact or body fluid transmission* means person-to-person transmission of an infectious agent through direct or indirect contact with an infected person's blood or other body fluids (Seigel *et al.*, 2007; 15).

*Exposed* means to be in circumstances in which there is recognized risk for transmission of an infectious agent from a human source to an ERE (Seigel *et al.*, 2007; 14).

*Potentially life-threatening infectious disease* means an infectious disease to which EREs may be exposed and that has reasonable potential to cause death or fetal mortality in either healthy EREs or EREs who are able to work but take medications or are living with conditions that might impair host defense mechanisms.

**Part I. List of Potentially Life-threatening Infectious Diseases to Which Emergency Response Employees May Be Exposed**

*A. Potentially Life-threatening Infectious Diseases: Routinely Transmitted by Contact or Body Fluid Exposures*

- Hepatitis B (HBV).
- Hepatitis C (HCV).
- Human immunodeficiency virus (HIV) infection.
- Rabies (Rabies virus).
- Vaccinia (Vaccinia virus).

*B. Potentially Life-threatening Infectious Diseases: Routinely Transmitted Through Aerosolized Airborne Means*

These diseases are included within "* * * those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means." Section 2695(b) [42 U.S.C. 300ff–131(b)]

- Measles (Rubeola virus).
- Tuberculosis (*Mycobacterium tuberculosis*)—infectious pulmonary or laryngeal disease; or extrapulmonary (draining lesion).
- Varicella disease—chickenpox, disseminated zoster (*Varicella zoster* virus).

*C. Potentially Life-Threatening Infectious Diseases: Routinely Transmitted Through Aerosolized Droplet Means*

These diseases are included within "* * * those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means." Section 2695(b) [42 U.S.C. 300ff–131(b)]

- Avian Influenza (Avian influenza A virus).
- Diphtheria (*Corynebacterium diphtheriae*).
- Meningococcal disease (*Neisseria meningitidis*).
- Mumps (Mumps virus).
- Plague, pneumonic (*Yersinia pestis*).
- Rubella (German measles; Rubella virus).
- SARS–CoV.
- Smallpox (Variola virus).
- Viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, and other viruses yet to be identified).

CDC will continue to monitor the scientific literature on infectious diseases. In the event that CDC determines that a newly emerged infectious disease fits criteria for inclusion in the list of potentially life-threatening infectious diseases required by the Ryan White HIV/AIDS Treatment Extension Act of 2009, CDC will amend the list and add the disease.

**Part II. Guidelines Describing the Circumstances in Which Such Employees May Be Exposed to Such Diseases**

*A. Exposure to Diseases Routinely Transmitted Through Contact or Body Fluid Exposures*

Contact transmission is divided into two subgroups: Direct and indirect. Direct transmission occurs when microorganisms are transferred from an infected person to another person without a contaminated intermediate object or person. Indirect transmission involves the transfer of an infectious agent through a contaminated intermediate object or person.

Contact with blood and other body fluids may transmit the bloodborne pathogens HIV, HBV, and HCV. When EREs have contact circumstances in which differentiation between fluid types is difficult, if not impossible, all body fluids are considered potentially hazardous. In the Occupational Safety and Health Administration (OSHA) Bloodborne Pathogens Standard, an exposure incident is defined as a "specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties" (29 CFR 1910.1030).

Occupational exposure to rabies would include exposure incidents similar to those described for bloodborne pathogens, with special concern for contact of mucous membranes (eyes, nose, mouth, *etc.*) or non-intact skin to the saliva [rather than blood] of infected individuals. Occupational exposures of concern to vaccinia would include contact of mucous membranes (eyes, nose, mouth, *etc.*) or non-intact skin with drainage from a vaccinia vaccination site.

[1] Evaluation and Response Regarding Request to Medical Facility.

*B. Exposure to Diseases Routinely Transmitted Through Aerosolized Airborne or Aerosolized Droplet Means*

Occupational exposure to pathogens routinely transmitted through aerosolized airborne transmission may occur when an ERE shares air space with a contagious individual who has an infectious disease caused by these pathogens. Such an individual can expel small droplets into the air through activities such as coughing, sneezing and talking. After water evaporates from the airborne droplets, the dried out remnants can remain airborne as droplet nuclei. Occupational exposure to pathogens routinely transmitted through aerosolized droplet transmission may occur when an ERE comes within about 6 feet of a contagious individual who has an infectious disease caused by these pathogens and who creates large respiratory droplets through activities such as sneezing, coughing, and talking.

**Part III. Guidelines Describing the Manner in Which Medical Facilities Should Make Determinations for Purposes of Section 2695B(d) [42 U.S.C. 300ff–133(d)]**

Section 2695B(d) [42 U.S.C. 300ff–133(d)] specifies that medical facilities must respond to appropriate requests by making determinations about whether EREs have been exposed to infectious diseases included on the list issued pursuant to Section 2695(a)(1) [42 U.S.C. 300ff–131(a)(1)].

A medical facility has access to two types of information related to a potential exposure incident to use in making a determination. First, the request submitted to the medical facility contains a "statement of the facts collected" about the ERE's potential exposure incident. Section 2695B [42 U.S.C. 300ff–133]. Information about infectious disease transmission provided in relevant CDC guidance documents (such as Siegel *et al.*, 2007) or in current medical literature should be considered in assessing whether there is a realistic possibility that the exposure incident described in the "statement of the facts" could potentially transmit an infectious disease included on the list issued pursuant to Section 2695 (a)(1) [42 U.S.C. 300ff–131(a)(1)].

Second, the medical facility possesses medical information about the victim of an emergency transported and/or treated by the ERE. This is the medical information that the medical facility would normally obtain according to its usual standards of care to diagnose or treat the victim, since the Act does not require special testing in response to a request for a determination. As stated in Section 2695G(b) [42 U.S.C. 300ff–138(b)], "this part may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease."

Information about the potential exposure incident and medical information about the victim should be used in the following manner to make one of the four possible determinations as required by Section 2695B(d) [42 U.S.C. 300ff–133(d)].

(1) The ERE involved has been exposed to an infectious disease included on the list issued pursuant to Section 2695(a)(1) [42 U.S.C. 300ff–131(a)(1)]:

—Facts provided in the request document a realistic possibility that an exposure incident occurred with potential for transmitting a listed infectious disease from the victim of an emergency to the involved ERE; and

—The medical facility possesses sufficient medical information allowing it to determine that the victim of an emergency treated and/or transported by the involved ERE had a listed infectious disease that was possibly contagious at the time of the potential exposure incident.

(2) The ERE involved has not been exposed to an infectious disease included on the list issued pursuant to Section 2695(a)(1) [42 U.S.C. 300ff–131(a)(1)]:

—Facts provided in the request rule out a realistic possibility that an exposure incident occurred with potential for transmitting a listed infectious disease from the victim of an emergency to the involved ERE; or

—The medical facility possesses sufficient medical information allowing it to determine that the victim of an emergency treated and/or transported by the involved ERE did not have a listed infectious disease that was possibly contagious at the time of the potential exposure incident.

(3) The medical facility possesses no information on whether the victim involved has an infectious disease included on the list issued pursuant to Section 2695(a)(1) [42 U.S.C. 300ff–131(a)(1)]:

—The medical facility lacks sufficient medical information allowing it to determine whether the victim of an emergency treated and/or transported by the involved ERE had, or did not have, a listed infectious disease at the time of the potential exposure incident.

—If the medical facility subsequently acquires sufficient medical information allowing it to determine that the victim of an emergency treated and/or transported by the involved ERE had a listed infectious disease that was possibly contagious at the time of the potential exposure incident, then it should revise its determination to reflect the new information.

(4) The facts submitted in the request are insufficient to make the determination about whether the ERE was exposed to an infectious disease included on the list issued pursuant to Section 2695(a)(1) [42 U.S.C. 300ff–131(a)(1)]:

—Facts provided in the request insufficiently document the exposure incident, making it impossible to determine if there was a realistic possibility that an exposure incident occurred with potential for transmitting an infectious disease included on the list issued pursuant to Section 2695(a)(1) [42 U.S.C. 300ff–131(a)(1)] from the victim of an emergency to the involved ERE.

**Addendum**

**References**

Baron P. *Generation and Behavior of Airborne Particles [Aerosols).* PowerPoint Presentation. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Division of Applied Technology. *http://www.cdc.gov/niosh/topics/aerosols/pdfs/Aerosol_101.pdf.* Accessed September 23, 2010.

Baron PA, Willeke K, eds. *Aerosol measurement: Principles, Techniques, and Applications.* Second edition. New York: John Wiley & Sons, Inc. 2001.

OSHA Standards, Bloodborne Pathogens, 29 CFR 1910.1030 (2009).

Public Health Service Act, 42 U.S.C. 201 *et seq.* (2006).

Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111–87, to be codified at 42 U.S.C. 300ff–131 *et seq.*).

Siegel JD, Rhinehart E, Jackson M, Chiarello L, and the Healthcare Infection Control Practices Advisory Committee. *2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings. http://www.cdc.gov/hicpac/pdf/isolation/Isolation2007.pdf.* Accessed September 23, 2010.

Dated: December 2, 2010.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2010–31149 Filed 12–10–10; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel E, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 10 a.m.–5 p.m., March 8, 2011 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of "Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel E."

*Contact Person for More Information:* Donald Blackman, Ph.D., Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3023, e-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 2, 2010.

**Elaine L. Baker,**

*Director, Monogement Anolysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010–31147 Filed 12–10–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel F, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 9 a.m.–6 p.m., March 4, 2011 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the initial review, discussion, and evaluation of "Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel F."

*Contact Person for More Information:* Donald Blackman, PhD, Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3023, e-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 2, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Diseose Control and Prevention.*

[FR Doc. 2010–31146 Filed 12–10–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel D, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 11 a.m.–3 p.m., February 25, 2011 (Closed).

*Place:* Teleconference.

*Stotus:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Motters to be Discussed:* The meeting will include the initial review, discussion, and evaluation of "Pregnancy Risk Assessment Monitoring System (PRAMS), DP11–001 Panel D."

*Contact Person for More Information:* Donald Blackman, Ph.D., Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3023, e-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 2, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Diseose Control and Prevention.*

[FR Doc. 2010–31143 Filed 12–10–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0622]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Color Additive Certification Requests and Recordkeeping

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations governing batch certification of color additives manufactured for use in foods, drugs, cosmetics or medical devices in the United States.

**DATES:** Submit either electronic or written comments on the collection of information by February 11, 2011.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://*

*www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Color Additive Certification Requests and Recordkeeping—21 CFR Part 80 (OMB Control Number 0910–0216)—Extension**

FDA has regulatory oversight for color additives used in foods, drugs, cosmetics, and medical devices. Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless it meets the requirements of a listing regulation, including any requirement for batch certification, and is used in accordance with the regulation. FDA lists color additives that have been shown to be safe for their intended uses in title 21 of the Code of Federal Regulations (CFR). FDA requires batch certification for all color additives listed in 21 CFR part 74 and for all color additives provisionally listed in 21 CFR part 82. Color additives listed in 21 CFR part 73 are exempted from certification.

The requirements for color additive certification are described in part 80 (21 CFR part 80). In the certification procedure, a representative sample of a new batch of color additive, accompanied by a "request for certification" that provides information about the batch, must be submitted to FDA's Office of Cosmetics and Colors. FDA personnel perform chemical and other analyses of the representative sample and, providing the sample satisfies all certification requirements, issue a certification lot number for the batch. FDA charges a fee for certification based on the batch weight and requires manufacturers to keep records of the batch pending and after certification.

Under § 80.21, a request for certification must include: Name of color additive, manufacturer's batch number and weight in pounds, name and address of manufacturer, storage conditions, statement of use(s), certification fee, and signature of person requesting certification. Under § 80.22, a request for certification must include a sample of the batch of color additive that is the subject of the request. The sample must be labeled to show: Name of color additive, manufacturer's batch number and quantity, and name and address of person requesting certification. Under § 80.39, the person to whom a certificate is issued must keep complete records showing the disposal of all of the color additive covered by the certificate. Such records are to be made available upon request to any accredited representative of FDA until at least 2 years after disposal of all of the color additive.

The purpose for collecting this information is to help FDA assure that only safe color additives will be used in foods, drugs, cosmetics, and medical devices sold in the United States. The required information is unique to the batch of color additive that is the subject of a request for certification. The manufacturer's batch number is used for temporarily identifying a batch of color additive until FDA issues a certification lot number and for identifying a certified batch during inspections. The manufacturer's batch number also aids in tracing the disposal of a certified batch or a batch that has been denied certification for noncompliance with the color additive regulations. The manufacturer's batch weight is used for assessing the certification fee. The batch weight also is used to account for the disposal of a batch of certified or certification-denied color additive. The batch weight can be used in a recall to determine whether all unused color additive in the batch has been recalled. The manufacturer's name and address and the name and address of the person requesting certification are used to contact the person responsible should a question arise concerning compliance with the color additive regulations. Information on storage conditions pending certification is used to evaluate whether a batch of certified color additive is inadvertently or intentionally altered in a manner that would make the sample submitted for certification analysis unrepresentative of the batch. FDA checks storage information during inspections. Information on intended uses for a batch of color additive is used to assure that a batch of certified color additive will be used in accordance with the requirements of its listing regulation. The statement of the fee on a certification request is used for accounting purposes so that a person requesting certification can be notified promptly of any discrepancies.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 80.21 | 32 | 185 | 5,920 | 0.17 | 1,006 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

| 21 CFR Section | Number of respondents | Annual frequency per response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 80.22 | 32 | 185 | 5,920 | 0.05 | 296 |
| Total | | | | | 1,302 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | Number of recordkeepers | Annual frequency of recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 80.39 | 32 | 185 | 5,920 | 0.25 | 1,480 |
| Total | | | | | 1,480 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate on its review of the certification requests received over the past 3 fiscal years (FY). The annual burden estimate for this information collection is 2,782 hours. The estimated reporting burden for this information collection is 1,302 hours and the estimated recordkeeping burden for this information collection is 1,480 hours. From FY 2008 to FY 2010, FDA processed an average of 5,932 responses (requests for certification of batches of color additives) per year. There were 32 different respondents, corresponding to an average of approximately 185 responses from each respondent per year. Using information from industry personnel, FDA estimates that an average of 0.22 hour per response is required for reporting (preparing certification requests and accompanying samples) and an average of 0.25 hour per response is required for recordkeeping.

FDA's Web-based color certification information system allows certifiers to request color certification online, follow their submissions through the process, and obtain information on account status. The system sends back the certification results electronically, allowing certifiers to sell their certified color before receiving hard copy certificates. Any delays in the system result only from shipment of color additive samples to FDA's Office of Cosmetics and Colors for analysis. FDA has estimated a reduction in the hour burden for reporting from use of the Web-based system.

Dated: December 8, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–31195 Filed 12–10–10; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0389]**

### Medical Device User Fee Program; Meetings on Reauthorization; Request for Notification of Patient and Consumer Advocacy Group Intention to Participate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for notification of participation.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing this notice to request that patient and consumer advocacy groups notify FDA of their intent to participate in periodic consultation meetings on reauthorization of the Medical Device User Fee Amendments of 2007 (MDUFA) (the Food and Drug Administration Amendments Act of 2007). The statutory authority for MDUFA expires September 30, 2012. At that time, new legislation will be required for FDA to continue collecting user fees for the medical device program. The Federal Food, Drug, and Cosmetic Act (the FD&C Act) requires that FDA consult with a range of stakeholders in developing recommendations for the next MDUFA program. The FD&C Act also requires that FDA hold continued discussions with representatives of patient and consumer advocacy groups at least monthly during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these discussions by establishing consistent patient and consumer advocacy group representation.

**DATES:** Submit notification of intention to participate by January 6, 2011. The first patient and consumer advocacy group meeting will be held on January 13, 2011, from 9 a.m. to 11 a.m. Meetings will continue at least monthly during reauthorization negotiations with the regulated industry.

**ADDRESSES:** Submit notification of intention to participate in monthly patient and consumer advocacy group meetings by e-mail to *MDUFAReauthorization@fda.hhs.gov*. The first meeting will be held at the Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 1503 B and C, Silver Spring, MD 20993–0002.

**FOR FURTHER INFORMATION CONTACT:** Cindy Garris, Food and Drug Administration, Center for Devices and Radiological Health 10903 New Hampshire Ave., Bldg. 66, rm. 4610, Silver Spring, MD 20993–0002, 301–796–5861, FAX: 301–847–8149.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The authority for MDUFA (Pub. L. 110–85) expires September 30, 2012. Without new legislation to reauthorize the program, FDA will no longer be able to collect user fees to fund the medical device program. Section 738A(b)(1) (21 U.S.C. 379j–1(b)(1)) of the FD&C Act requires that FDA consult with a range of groups in developing recommendations for the next MDUFA program, including scientific and academic experts, health care professionals, and representatives from patient and consumer advocacy groups. FDA initiated this process of consultation on September 14, 2010, by

holding a public meeting where stakeholders and other members of the public were given an opportunity to present their views on reauthorization (75 FR 49502, August 13, 2010). This meeting and written comments submitted to the docket have provided critical input as FDA prepares for reauthorization discussions. Section 738A(b)(3) of the FD&C Act further requires that FDA meet with patient and consumer advocacy groups at least once every month during negotiations with the regulated industry to continue discussions of their views on the reauthorization, and their suggestions for changes to the MDUFA program.

FDA is issuing this **Federal Register** notice to request that patient and consumer advocacy groups notify FDA of their intent to participate in periodic consultation meetings on reauthorization of MDUFA. FDA believes that consistent representation at these meetings will be important to ensuring progress in these discussions. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings regularly and preparing for the discussions as needed. Patient and consumer advocacy groups who identify themselves through this notice will be included in all future patient and consumer advocacy group meetings while FDA negotiates with the regulated industry. If a representative of a patient and consumer advocacy group decides to participate in these monthly meetings at a later time, they may still participate in remaining monthly meetings by notifying FDA (*see* **ADDRESSES**). These meetings will satisfy the requirement in section 738A(b)(3) of the FD&C Act.

## II. Additional Information on MDUFA

There are several sources of information on FDA's Web site that may serve as useful resources for patient and consumer advocacy groups participating in the periodic consultation meetings:

- Information on the September 2010 public meeting on MDUFA Reauthorization, the **Federal Register** notice announcing the meeting, and the transcript of the meeting are available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm218250.htm.*
- FDA created a Webinar on the Medical Device User Fee program, medical device development, and FDA's medical device review in MDUFA. These presentations are available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm218250.htm.*
- Key **Federal Register** documents, MDUFA-related guidances, legislation, performance reports, and financial reports and plans are posted at *http://www.fda.gov/MDUFA.*
- FDAAA-specific information is available at: *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FoodandDrugAdministrationAmendmentsActof2007/default.htm.*

## III. Notification of Intent To Participate in Periodic Patient and Consumer Advocacy Group Consultation Meetings

If you intend to participate in continued periodic patient and consumer advocacy group consultation meetings regarding MDUFA Reauthorization, please provide notification by e-mail to *MDUFAReauthorization@fda.hhs.gov* by January 6, 2011. Your e-mail should contain complete contact information, including name, title, affiliation, address, e-mail address, telephone number, and notice of any special accommodations required because of disability.

Representatives of patient and consumer advocacy groups will receive confirmation and additional information about the first meeting once FDA receives their notification.

Dated: December 8, 2010.

**Nancy K. Stade,**

*Deputy Director for Policy, Center for Devices and Radiological Health.*

[FR Doc. 2010–31160 Filed 12–10–10; 8:45 am]

**BILLING CODE 4160–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget 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, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, 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.

**Proposed Project: Retention Survey of NHSC Clinicians and Alumni/NHSC Site Administrators—**

[NEW] The National Health Service Corps (NHSC) Loan Repayment and Scholarship Programs were established to assure an adequate supply of trained primary care health care professionals to provide services in the neediest Health Professional Shortage Areas (HPSAs) of the United States. Under these programs, the Department of Health and Human Services agrees to repay the educational loans of, or provide scholarships to, primary care health professionals. In return, the professionals agree to serve for a specified period of time in a Federally designated HPSA approved by the Secretary. The last survey conducted to analyze retention of NHSC clinicians is more than ten years old. There is a need to distribute a survey to reevaluate the personal/professional development of NHSC clinicians in an effort to retain the clinicians in service providing care for individuals residing in underserved areas. The survey will ask current and former NHSC clinicians questions regarding professional satisfaction, expectations of service in the NHSC, and their experiences at NHSC sites. The survey will also ask questions of NHSC site administrators about their locations and the attributes of current and former NHSC clinicians at these sites.

The estimated response burden for the survey is as follows:

SURVEY

| Instrument | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Survey of Site Administrator | 2,000 | 1 | 2,000 | .15 | 300 |
| Survey of NHSC Clinicians in Service | 6,500 | 1 | 6,500 | .13 | 845 |
| Survey of NHSC Alumni (Recent) | 3,000 | 1 | 3,000 | .20 | 600 |
| Survey of NHSC Alumni (Remote) | 1,143 | 1 | 1,143 | .15 | 171 |
| Total | 12,643 | 4 | 12,643 | .63 | 1,916 |

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 8, 2010.

**Robert Hendricks,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2010–31238 Filed 12–10–10; 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

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: The Division of Independent Review Grant Reviewer Recruitment Form (OMB No. 0915–0295)—[Extension]**

HRSA's Division of Independent Review (DIR) is responsible for carrying out the independent and objective review of all eligible applications submitted to HRSA. DIR ensures that the independent review process is efficient, effective, economical, and complies with statutes, regulations, and policies. The review of applications is performed by people knowledgeable in the field of endeavor for which support is requested and is advisory to individuals in HRSA responsible for making award decisions.

To streamline the selection and assignment of grant reviewers to objective review committees, HRSA utilizes a Web-based data collection form to gather critical reviewer information. The Grant Reviewer Form standardizes pertinent categories of reviewer information, such as: areas of expertise; occupations; work settings; reviewer experience; and allows maximum use of drop-down menus to simplify the data collection process. The Web-based system also permits reviewers to update their information as needed. HRSA maintains a pool of approximately 5,000 individuals that have previously served on HRSA objective review committees.

The estimated annual burden is as follows:

| Grant recruitment form | Number of respondents | Responses per respondent | Total responses | Hours per Response | Total burden hours |
|---|---|---|---|---|---|
| New reviewer | 1,380 | 1 | 1,380 | 45 min. | 1,035 |
| Updating reviewer information | 4,255 | 1 | 4,255 | 30 min. | 1,850 |
| Total | 4,900 | | 4,900 | | 2,750 |

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 8, 2010.

**Robert Hendricks,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2010–31236 Filed 12–10–10; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Adherence Studies in Adolescents with Chronic Diseases: Kidney, Urologic or Diabetes (R01).

*Date:* January 10, 2011.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research in Diabetes and Obesity.

*Date:* January 25, 2011.

*Time:* 7 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 7, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–31182 Filed 12–10–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Ancillary Studies in Immunomodulation Clinical Trails.

*Date:* January 6, 2011.

*Time:* 12 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

*Contact Person:* Lakshmi Ramachandra, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *Ramachandral@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 7, 2010.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–31181 Filed 12–10–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5374–N–22]**

### Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Chicago Housing Authority for the purchase and installation of microwave ovens and Ground Fault Circuit Interrupter (GFCI) outlets for the Kenmore Apartments project.

**FOR FURTHER INFORMATION CONTACT:** Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register.**

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on November 23, 2010, upon request of the Chicago

Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Kenmore Apartments project. The exception was granted by HUD on the basis that the relevant manufactured goods (GFCI outlets and microwave ovens) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: December 3, 2010.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2010–31234 Filed 12–10–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2010–N25; 41910–1112–0000–F2]**

### Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit Extension; Availability of Proposed Low-Effect Habitat Conservation Plan; Deltona Family YMCA, Volusia County, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt; request for comment/information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have received an application from the (Applicant) for an extension of incidental take permit (ITP) # TE176788–0 for 5 years under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and plan, as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination we used our environmental action statement and low-effect screening form, which are also available for review.

**DATES:** To ensure consideration, please send your written comments by January 12, 2011.

**ADDRESSES:** If you wish to review the application and HCP, you may request documents by U.S. mail, e-mail, or phone (*see* below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

*E-mail: northflorida@fws.gov.* Use "Attn: Permit number TE176788–0" as your message subject line.

*Fax:* Field Supervisor, (904) 731–3045, Attn.: Permit number TE176788–0.

*U.S. mail:* Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE176788–0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

*In-person drop-off:* You may drop off information during regular business hours at the above office address.

**FOR FURTHER INFORMATION CONTACT:** Erin Gawera, telephone: (904) 731–3121, e-mail: *erin_gawera@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to Federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of Federally listed fish, wildlife, or plants.

#### Applicant's Proposal

The applicant has been approved for take of approximately 0.3 ac of occupied Florida scrub-jay foraging and sheltering habitat incidental to construction of an expansion to an existing YMCA facility, and seeks a 5-year extension on an existing permit. The 10-ac project is located on parcel # 08–18–31–00–00–0070 within Section 08. Township 18 South, Range 31 East, Volusia County, Florida. The project includes construction of an expansion to the existing YMCA facility and the associated infrastructure, and landscaping. The applicant has been approved to mitigate for the take of the Florida scrub-jay by restoring and managing ±1.3 acres onsite of habitat occupied by the covered species.

#### Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). The notice for this permit was published in the **Federal Register** on May 9, 2008 (73 FR 26407), and the ITP was issued on August 25, 2008. A low-effect HCP is one involving (1) Minor or negligible effects on Federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

#### Next Steps

We will evaluate the plan and comments we receive to determine whether the ITP extension application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue the extension of ITP # TE176788–0. In August 2008 we determined issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP extension. If the requirements are met, we will issue the permit extension to the applicant.

#### Public Comments

If you wish to comment on the permit application, plan, and associated documents, you may submit comments by any one of the methods in **ADDRESSES.**

#### Public Availability of Comments

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

**Authority**

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: December 3, 2010.

**David L. Hankla,**

*Field Supervisor, Jacksonville Field Office.*

[FR Doc. 2010–31148 Filed 12–10–10; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

**[USGS—GX11EB00A1810.00]**

### Proposed Information Collection; Assessment of the Business Requirements and Benefits of Enhanced National Elevation Data

**AGENCY:** United States Geological Survey (USGS), Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Geological Survey) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. To comply with the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this ICR. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

**DATES:** You must submit comment on or before January 12, 2011.

**ADDRESSES:** Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please send a copy of your comments on the ICR to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue Fort Collins, CO 80526 (mail); *pondsp@usgs.gov* (e-mail). Please reference Information Collection Request 1028–NEW, LiDAR.

**FOR FURTHER INFORMATION CONTACT:** Gregory Snyder by mail at U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 517, Reston, VA 20192–0001, or by telephone at 703–648–5169.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

USGS supports some of the most pressing resource management, environmental and climate change science issues faced by our Nation. Light Detection and Ranging (LiDAR) is the leading technology for collecting highly accurate three-dimensional measurements of the Earth's topography and surface features such as buildings, bridges, coastlines, rivers, forests and other landscape characteristics. These data provide an unprecedented tool for scientific understanding and inform National decisions related to ecosystem management, energy development, natural resource conservation and mitigating geologic and flood-related hazards. The USGS now collects LiDAR data to a limited extent and primarily for upgrading bare-earth elevation data for The National Map. This study seeks to establish a baseline of national business needs and associated benefits for LiDAR to enhance the responsiveness of USGS programs, and to design an efficient future program that balances requirements, benefits and costs. The study advances coordinated program development among the numerous Federal and State agencies that increasingly rely on LiDAR to enable the fulfillment of their missions. The study is sponsored by the National Digital Elevation Program steering committee and supported by several member agencies.

The information collection process will be guided by an interagency management team led by USGS with support from a professional services contractor. The information collection will be conducted using a standardized template. Responses are one-time and voluntary.

**II. Data**

*OMB Control Number:* None. This is a new collection.

*Title:* Assessment of the Business Requirements and Benefits of Enhanced National Elevation Data.

*Type of Request:* New.

*Affected Public:* States, U.S. Territories, Tribes and local natural resource development agencies.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* One time only.

*Estimated Annual Number of Respondents:* 445.

*Estimated Total Annual Burden Hours:* 422.

**III. Request for Comments**

We are again inviting comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publically available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that will be done.

Dated: December 7, 2010.

**Bruce K. Quirk,**

*Program Coordinator.*

[FR Doc. 2010–31169 Filed 12–10–10; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVSO0000.L16100000.DO0000. LXSS100F0000, 241A; 11–08807; MO#4500015402; TAS: 14X1109]**

### Notice of Intent to Prepare a Resource Management Plan for the Battle Mountain District and Associated Environmental Impact Statement, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Battle Mountain District, Battle Mountain, Nevada, intends to prepare a Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the Battle Mountain District, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The new Battle Mountain RMP will cover both the Mount Lewis Field Office and the Tonopah Field Office and will replace the existing Shoshone-Eureka and Tonopah RMPs.

**DATES:** This notice initiates the public scoping process for the Battle Mountain RMP and associated EIS. Comments on issues may be submitted in writing until February 11, 2011. The date(s) and location(s) of scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 60-day scoping period or 30 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the Battle Mountain RMP and EIS by using any of the following methods:

- *Web site: http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.*
- *E-mail: BattleMountainRMP@blm.gov.*
- *Fax:* 775–635–4034.
- *Mail:* Bureau of Land Management, 50 Bastian Road, Battle Mountain, NV 89820.

Documents pertinent to this proposal may be examined at the Battle Mountain District Office.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to the mailing list, call Christopher Worthington, planning and environmental coordinator, 775–635–4144, or e-mail *Christopher_Worthington@blm.gov.*

**SUPPLEMENTARY INFORMATION:** This document provides notice that the BLM District Office, Battle Mountain, Nevada intends to prepare a RMP with an associated EIS for the Battle Mountain District, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in portions of Lander, Eureka, Nye, and Esmeralda counties, Nevada and encompasses approximately 10.5 million acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by the BLM, Federal, State, and local agencies, and other stakeholders. The issues include: managing vegetative and water resources, including identifying terrestrial and aquatic wildlife and fish priority habitats; managing noxious and invasive species; managing renewable energy development for geothermal, wind, and solar power, including stipulations to protect sensitive resources; identifying and evaluating areas of critical environmental concern; identifying lands with wilderness characteristics with an updated inventory; determining eligibility for wild and scenic rivers; managing National Historic Trails; identifying off-highway vehicle designations and travel management; identifying special recreation management areas to meet increasing recreation demands; managing and protecting visual resources, cultural, historical, and paleontological resources, as well as Native American religious and traditional values; and making land tenure adjustments to meet community growth needs and sustainable development.

Preliminary planning criteria include: (1) The planning area is defined as the area covered by the existing Shoshone-Eureka and Tonopah RMPs. The plan will make resource use determinations for public lands within the defined planning area boundary. (2) The planning effort will rely on available inventories of the lands and resources as well as data gathered during the planning process. (3) The planning will address requirements for sage-grouse habitat and conservation as outlined in the National Sage-Grouse Habitat Conservation Strategy, and the most current BLM guidance and instruction memoranda will be followed. (4) The planning process will use Geographic Information Systems and corporate geospatial data to the extent practicable and Federal Geographic Data Committee standards and other applicable BLM data standards will be followed. (5) The plan and associated EIS will be developed through the BLM's ePlanning system to the extent consistent with the current functionality of the system and schedule considerations. (6) The plan will be consistent to the maximum extent possible with the plans and management programs of local government, consistent with State and Federal laws and guiding regulations and coordinated with other Federal agencies where appropriate. (7) The planning process will use and observe principles of multiple use and sustained yield. (8) The planning process will involve consultation with Native American Tribal governments. (9) The plan will recognize valid existing rights and incorporate valid existing management from the Shoshone-Eureka and Tonopah RMPs as appropriate. (10) Opportunities for public involvement will be provided throughout the planning process. (11) A review of eligibility, findings and tentative classification of waterways as eligible for inclusion in the National Wild and Scenic River System will follow the criteria contained in 43 CFR 8351. (12) Environmental protection and energy production are each desirable and necessary objectives and will not be considered mutually exclusive priorities.

You may submit comments on issues and planning criteria to the BLM using one of the methods listed in the **ADDRESSES** section above. Before including an address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate the identified issues to be addressed in the plan and will place them into one of three categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue is placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: wildlife and fisheries, threatened and endangered species, special status species, vegetation, invasive and noxious weeds, renewable energy, lands and realty, minerals management, outdoor recreation, off-highway vehicle and transportation, air resources, visual resources, cultural resources and Native American concerns, paleontology, hydrology, public safety, law enforcement, fire ecology and management, rangeland

management, sociology and economics, and Geographic Information Systems.

**Authority:** 40 CFR 1501.7, 43 CFR 1610.2.

**Ron Wenker,**

*Nevada State Director.*

[FR Doc. 2010–31207 Filed 12–10–10; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA–051552, LLCAD0700 L51010000 ER0000 LVRWB10B3980]**

### Notice of Intent To Prepare a Land Use Plan Amendment and an Environmental Impact Statement for the Pattern Energy Group Ocotillo Express Wind Energy Project, Imperial County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA); the Federal Land Policy and Management Act of 1976, as amended, and the California Environmental Quality Act (CEQA), the Bureau of Land Management (BLM) El Centro Field Office and Imperial County, California, intend to prepare a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) along with a proposed amendment to the California Desert Conservation Area (CDCA) Plan (1980, as amended). This notice announces the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the Draft EIS/EIR and possible CDCA Plan amendment. Comments may be submitted in writing until January 12, 2011. The date(s) and location(s) of any scoping meetings and site visits will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/elcentro.html*. In order to be included in the Draft EIR/EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIR/EIS.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the Pattern Energy Group Ocotillo Express Wind Energy Project Draft EIR/EIS by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/elcentro.html.*
- *E-mail: caocotillo@blm.gov.*
- *Fax:* (760) 337–4490.
- *Mail:* Cedric Perry, Project Manager, California Desert District (CDD), BLM, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

Documents pertinent to this proposal may be examined at the CDD or the BLM's California State Office, 2800 Cottage Way, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to the project mailing list, contact Cedric Perry, BLM Project Manager, telephone (951) 697–5388; address 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553; e-mail *Cedric_Perry@ca.blm.gov.*

**SUPPLEMENTARY INFORMATION:** Ocotillo Express, LLC has submitted an application for a right-of-way authorization to construct, operate, maintain, and decommission, an approximate 15,000-acre, 550 megawatt (MW) wind energy project including a substation, administration, operations and maintenance facilities, transmission, and temporary construction lay down areas. The proposed wind energy project would be located on BLM administered lands and a small portion on lands under the jurisdiction of Imperial County, approximately 5 miles west of the town of Ocotillo, Imperial County, California. The proposed action consists of the construction, operation, maintenance, and decommissioning of wind turbine generators and associated facilities necessary to successfully generate up to 550 MW of electricity. The project would be constructed in 2 phases: Phase I is anticipated to total approximately 299 MW, and Phase II is about 251 MW. A recently approved high-voltage transmission line known as the Sunrise Powerlink crosses the Ocotillo Wind Energy Project site and will facilitate interconnection of the proposed project and transmission of its renewable energy output to Southern California.

The BLM will be the lead agency for NEPA compliance and Imperial County will act as the lead agency under CEQA for the project. The BLM has invited the U.S. Army Corps of Engineers (Corps) to be a cooperating Federal agency in the preparation of the EIR/EIS because the proposed project may require a section 404 permit under the Clean Water Act. The BLM and Corps agree that establishing a cooperating agency relationship will create a more streamlined and coordinated approach in developing the Ocotillo EIR/EIS and they will be developing a Memorandum of Understanding for this purpose.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and will guide the process of developing the EIR/EIS. At present, the BLM has identified the following preliminary issues: air quality, biological resources, recreation, cultural resources, water resources, geological resources, land use, noise, paleontological resources, land with wilderness characteristics, public health, socioeconomics, soils, traffic and transportation, visual resources, and other issues. Authorization of this proposal would require an amendment of the CDCA Plan. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans. The BLM will integrate the land use planning process with the NEPA process for this project.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns, including impacts on Indian trust assets, will be given due consideration. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Public comments, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, California 92243, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

**Thomas Pogacnik,**

*Deputy State Director, Natural Resources.*

**Authority:** 40 CFR 1501.7 and 43 CFR 1610.2.

[FR Doc. 2010–31139 Filed 12–10–10; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCOS06000 L91310000.EI0000]**

### Notice of Proposed Supplementary Rules for Public Lands in Colorado: Saguache, Alamosa, Rio Grande, Conejos, and Costilla Counties

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed supplementary rules.

**SUMMARY:** The Bureau of Land Management (BLM) Colorado is proposing supplementary rules for public land included in the San Luis Resource Area Travel Management Plan (TMP), approved on June 4, 2009. These supplementary rules would apply to the public lands within Saguache, Alamosa. Rio Grande, Conejos, and Costilla Counties, Colorado, within the TMP, and under the management of the San Luis Valley Public Lands Center. The proposed rules implement decisions found in the TMP relating to the use of the lands, conduct of visitors, health and safety of visitors, and protection of visitors and natural resources.

**DATES:** You should submit your comments by February 11, 2011. Comments postmarked or received in person or by electronic mail after this date may not be considered in the development of the final supplementary rules.

**ADDRESSES:** You may submit comments by the following methods: Mail or hand-deliver: Larry Velarde, Bureau of Land Management, San Luis Valley Public Lands Center, 1803 West Hwy 160, Monte Vista, Colorado, 81144.

You may also submit comments via electronic mail to: *rgfo_comments@blm.co.gov* (include "Attn: San Luis Resource Area Travel Management Plan" in the subject line).

**FOR FURTHER INFORMATION CONTACT:** Larry Velarde, Natural Resource Specialist, Recreation, San Luis Valley Public Lands Center, 1803 West Hwy 160, Monte Vista, Colorado 81144, (719) 852–5941. Persons who use a telecommunications device for the deaf (TDD) may contact these individuals by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

I. Authority
II. Public Comment Procedures
III. Background
IV. Discussion of the Proposed Supplementary Rules
V. Procedural Matters

### I. Authority

43 U.S.C. 1740, 43 U.S.C. 315a, 43 CFR 8341.1, 8364.1, and 8365.1–6.

### II. Public Comment Procedures

You may mail or hand-deliver comments to the Bureau of Land Management, San Luis Valley Public Lands Center, 1803 West Hwy 160, Monte Vista, Colorado 81144, or e-mail to *rgfo_comments@blm.co.gov.*

Written comments on the proposed supplementary rule should be specific, confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the Administrative Record for the final supplementary rule, comments that the BLM receives after the close of the comment period (*see* **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the San Luis Valley Public Lands Center address listed in **ADDRESSES** during regular business hours (8 a.m. to 4 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### III. Background

A "Notice of Intent to Prepare the San Luis Resource Valley Travel Management Plan and Amend San Luis Valley Resource Management Plan and Start the Scoping Period" was announced in the **Federal Register** on March 30, 2004 (69 FR 16599). The completion of the San Luis Resource Area TMP Environmental Assessment (EA) led to a 30-day public comment period, starting on June 3, 2008. Following analysis of the public comments, the BLM issued two decisions: An RMP amendment proposed decision record (May 14, 2009), and an implementation decision on the San Luis Resource Area TMP (June 4, 2009). The decision restricts off-highway vehicle use to designated roads and trails in the TMP area and includes discussion of the proposed supplementary rules.

### IV. Discussion of the Proposed Supplementary Rules

These proposed supplementary rules apply to the public lands within the San Luis Resource Area TMP area. The TMP area consists of 520,945 acres of public lands within Saguache, Alamosa, Rio Grande, Conejos, and Costilla Counties, Colorado, in the following described townships:

**Colorado, New Mexico Principal Meridian**

T. 45 N., R. 4 E. through T. 45 N., R. 11 E.;
T. 46 N., R. 4 E. through T. 46 N., R. 11 E.;
T. 41 N., R. 6 E. and R. 7 E.;
T. 40 N., R. 4 E. through T. 40 N., R. 6 E.;
T. 40 N., R. 11 E.;
T. 42 N., R. 5 E. through T. 42 N., R. 7 E.;
T. 42 N., R. 9 E. and R. 10 E.;
T. 43 N., R. 5 E. through T. 43 N., R. 7 E.;
T. 43 N., R. 9 E. through T. 43 N., R. 12 E.;
T. 44 N., R. 4 E. through T. 44 N., R. 12 E.;
T. 47 N., R. 7 E. through T. 47 N., R. 10 E.;
T. 48 N., R 8 E. and R. 9 E.;
T. 36 N., R. 6 E. through T. 36 N., R. 8 E.;
T. 36 N., R. 11 E. and R. 12 E.;
T. 38 N., R. 6 E. and R. 7 E.;
T. 38 N., R. 11 E. through T. 38 N., R. 13 E.;
T. 37 N., R. 6 E. and R. 7 E.;
T. 37 N., R. 12 E. and R. 13 E.;
T. 37 N., R. 4 E. through T. 37 N., R. 7 E.;
T. 37 N., R. 11 E. through T. 37 N., R. 13 E.;
T. 32 N., R. 7 E. through T. 32 N., R. 11 E.;
T. 33 N., R. 8 E. through T. 33 N., R. 11 E.;
T. 34 N., R. 6 E. through T. 34 N., R. 8 E.;
T. 34 N., R. 10 E. and R. 11 E.;
T. 35 N., R. 5 E. through T. 35 N., R. 8 E.; and
T. 35 N., R. 10 E. and R. 11 E.
6th Principal Meridian
T. 27 S., 73 W. through T. 29 S., R. 73 W.

The proposed supplementary rules are consistent with the record of decision of the San Luis Resource Area TMP, approved on June 4, 2009. The TMP includes specific management actions that restrict certain activities and define allowable uses. Restrictions on general travel and off-highway vehicle use are intended to enhance user safety and ensure compliance with travel management restrictions. These restrictions are designed to protect critical resources and scenic values in

different management areas within the TMP. The proposed supplementary rules implement these management actions within the San Luis Resource Area TMP area. The proposed rules apply to mechanized and motorized travel. A mechanized vehicle is propelled by human power without use of a motor. Motorized use includes off-road vehicles and off-highway vehicles, and may include motorcycles, all-terrain vehicles, or full-sized vehicles. The restrictions include limiting motorized travel to designated and signed routes, limiting mountain bikes and other mechanized vehicles to routes designated and signed for motorized and mechanized use only, closing cross-country travel off of designated routes for motorized and mechanized vehicles, closing the area to snowmobile use off of designated routes except for the designated Villa Grove Snowmobile Area, and closing motorized and mechanized travel in critical winter wildlife habitat yearly from January 1 to April 30. This closure would be adjusted to December 1 through April 30 should the Colorado Division of Wildlife close late season cow elk hunts in Game Management Units 68, 681, 682, 79, 791, 80, 81, 82, 861, and 83. Those routes utilized for commercial, administrative, and private property access will remain available for those uses during the seasonal motorized restriction period. Any seasonal restriction will not affect county maintained roads, rights-of-ways, or legal easements. This notice, with detailed maps, will be available at the San Luis Valley Public Lands Center.

## V. Procedural Matters

*Executive Order 12866, Regulatory Planning and Review*

These supplementary rules would not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules would not have an annual effect of $100 million or more on the economy. They would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. These rules merely govern conduct for public use of a limited selection of public lands.

*Clarity of the Supplementary Rules*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the proposed supplementary rule to the addresses specified in the **ADDRESSES** section.

*National Environmental Policy Act*

These proposed supplementary rules implement key land use planning decisions in the San Luis Resource Area TMP, approved on June 4, 2009. During the National Environmental Policy Act process for the TMP, many proposed decisions were fully analyzed, including the substance of these supplementary rules. The BLM has placed the San Luis Resource Area TMP Environmental Assessment EA, Finding of No Significant Impact, and Decision Record on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands and protect the health and safety of visitors and natural resources. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

These proposed supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. These rules would not result in an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

*Unfunded Mandates Reform Act*

These supplementary rules would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year; nor would these rules have a significant or unique effect on State, local, or Tribal governments or the private sector. The rules would have no effect on State, local, or Tribal governments and would not impose any requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands to protect the health and safety of visitors and natural resources and do not affect Tribal; commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The proposed supplementary rules would not represent a government action capable of interfering with constitutionally protected property rights. These supplementary rules do not address property rights in any form, and do not cause the impairment of one's property rights. Therefore, the BLM has determined that the proposed

supplementary rules would not cause a "taking" of private property or require further implications under this Executive Order.

*Executive Order 13132, Federalism*

The proposed supplementary rules 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. These supplementary rules do not conflict with any Colorado State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Colorado State Office of the BLM has determined that the proposed supplementary rules would not unduly burden the judicial system, and that they meet the requirements of Sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, BLM has found that these proposed supplementary rules do not include policies that have Tribal implications. The proposed supplementary rules merely restrict the use of motorized vehicles to certain areas and do not involve Indian lands, property rights, or sacred sites access. However, formal consultation with 14 Tribes was completed for the San Luis Resource Area TMP.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Under Executive Order 13211, BLM has determined that the proposed supplementary rules would not comprise a significant energy action. These rules would not have an adverse effect on energy supplies, production, or consumption and have no connection with energy policy.

*Paperwork Reduction Act*

The proposed supplementary rules would not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

*Author*

The principal author of these supplementary rules is John Murphy, Natural Resource Specialist, Recreation, San Luis Valley Public Lands Center, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authorities of 43 U.S.C. 315a and 1740, and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management proposes supplementary rules for public lands within the San Luis Valley Travel Management Plan Area administered by the BLM San Luis Valley Public Lands Center in Monte Vista, Colorado, to read as follows:

**Proposed Supplementary Rules for the San Luis Valley Travel Management Plan Area**

*Definitions*

*Camping* means erecting a tent or a shelter of natural or synthetic materials, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy.

*Designated road or trail* means roads and trails open to specified modes of travel and identified on a map of designated roads and trails that is maintained and available for public inspection at the Bureau of Land Management (BLM) San Luis Valley Public Lands Center, Monte Vista, Colorado. Designated roads and trails are open to public use in accordance with such limits and restrictions as are, or may be, specified in the resource management plan (RMP) or travel management plan (TMP), or in future decisions implementing the RMP. However, this definition excludes any road or trail with BLM-authorized restrictions that prevent use of the road or trail. Restrictions may include signs or physical barriers such as gates, fences, posts, branches, or rocks.

*Public land* means any land or interest in land owned by the United States and administered by the Secretary of the Interior through the BLM without regard to how the United States acquired ownership.

*Mechanized vehicle* is propelled by human power without use of a motor.

*Motorized vehicle* is used synonymously with off-road vehicles and off-highway vehicles, and may include motorcycles, all-terrain vehicles, or full-sized vehicles.

**Prohibited Acts**

1. You must not enter an area designated as closed by a BLM sign or map.

2. You must not use mechanized or motorized vehicles on roads and/or trails except where designated as open to such use by a BLM sign or map.

3. You must not travel cross-country with a snowmobile except where designated as open to such use by a BLM sign or map.

4. You must not park a motorized vehicle or trailer farther than 300 feet from a designated motorized road or trail.

5. You must not use a motorized vehicle or trailer for camping more than 300 feet from a designated road or trail.

6. You must not use a motorized vehicle for retrieving game more than 300 feet from a designated road or trail.

**Exemptions**

The following persons are exempt from these supplementary rules: Any Federal, State, local, and/or military employee acting within the scope of their duties; members of any organized rescue or fire-fighting force or law enforcement in performance of an official duty; and persons, agencies, municipalities, or individual authorized by the BLM while operating within the scope of their permit or authorization.

**Penalties**

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district shall be punishable by a fine of not more than $500. Under Section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Colorado may be tried before a United States Magistrate and fined no more than $1,000 and/or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

**John Mehlhoff,**

*Associate State Director.*

[FR Doc. 2010–31204 Filed 12–10–10; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNV930000 L14300000.ET0000 241A; NVN–62752; MO# 4500011865; 10–08807; TAS: 14X1109]**

### Public Land Order No. 7755; Withdrawal of Public Lands and Reserved Federal Minerals for the Ash Meadows National Wildlife Refuge, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws approximately 9,460.66 acres of public lands from settlement, sale, location, and entry under the general land laws, including the mining laws, and 5,570.02 acres of reserved Federal minerals from location under the mining laws, subject to valid existing rights, for a period of 20 years to protect the habitat of 12 endangered species. This order also transfers jurisdiction of the public lands within the Ash Meadows National Wildlife Refuge boundary to the U.S. Fish and Wildlife Service.

**DATES:** *Effective Date:* December 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Gratton, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520, 775–861–6532.

**SUPPLEMENTARY INFORMATION:** The public lands and the reserved Federal minerals described in this order are within the Ash Meadows National Wildlife Refuge boundary. Non-Federal lands within the Refuge boundary are not affected by this withdrawal. This action would protect Federal lands and minerals from surface disturbance, mining and other uses that could interfere with efforts to protect and implement recovery efforts for 12 Federally-listed threatened or endangered plant and animal species found only at Ash Meadows. The lands and Federal minerals would remain open to the mineral leasing and mineral material laws.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the public lands described in (a) below are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the mining laws (30 U.S.C. Ch. 2), and jurisdiction is transferred to the U.S. Fish and Wildlife Service for administration under the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee). The reserved Federal minerals underlying the lands described in (b) below are hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2).

**Mount Diablo Meridian**

*(a) Public Lands*

T. 17 S., R. 50 E.,
- Sec. 9, lots 7 and 8;
- Sec. 10, lot 12;
- Sec. 14, lot 11;
- Sec. 15, lots 1 to 4, inclusive;
- Sec. 17, E½NE¼;
- Sec. 19, lot 14;
- Sec. 21, lots 5 and 6;
- Sec. 22, lots 1 to 5, inclusive, W½SE¼, and SE¼SE¼;
- Sec. 23, lots 3 and 4;
- Sec. 26, S½;
- Sec. 27;
- Sec. 28, E½NE¼;
- Sec. 29, NE¼NW¼;
- Sec. 32, NE¼NE¼, S½NE¼, and N½SE¼;
- Sec. 34, NE¼;
- Sec. 35, NE¼, N½NW¼, SW¼NW¼, W½SW¼, E½SE¼, and NW¼SE¼;
- Sec. 36, W½ and SE¼SE¼.

T. 17 S., R. 51 E.,
- Sec. 31, lot 4, SE¼SW¼, and SW¼SE¼;
- Sec. 32, S½NW¼.

T. 18 S., R. 50 E.,
- Sec. 1, lots 1 to 4, inclusive;
- Sec. 2, lots 1 and 2, S½NE¼, and SE¼;
- Sec. 3, SW¼SW¼;
- Sec. 9, W½NW¼;
- Sec. 10, E½;
- Sec. 11, N½NW¼ and W½SW¼;
- Sec. 12, W½NE¼ and NW¼;
- Sec. 13, SW¼NE¼, SE¼SW¼, NW¼SE¼, E½W½SW¼SE¼, and E½SW¼SE¼;
- Sec. 14, NE¼, NW¼SE¼, and SE¼SE¼;
- Sec. 15, E½ and E½SW¼;
- Sec. 23;
- Sec. 24, E½NE¼, NW¼NE¼, N½NW¼, and W½SW¼;
- Sec. 25, S½N½ and NW¼NW¼;
- Sec. 26, NE¼.

T. 18 S., R. 51 E.,
- Sec. 5, lot 1;
- Sec. 6, lots 2 to 6, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
- Sec. 7, NE¼ and E½NW¼;
- Sec. 8, NW¼;
- Sec. 18, lots 2 to 4, inclusive, SW¼NE¼, SE¼NW¼, and E½SW¼;
- Sec. 19, lots 1 and 2, E½NE¼, NW¼NE¼, SW¼NE¼, E½NW¼, E½SW¼, and SE¼;
- Sec. 20, W½E½ and W½;
- Sec. 29, W½NE¼ and NW¼;
- Sec. 30, lot 2, NE¼ (excluding Patent #27–70–0091), and E½NW¼.

The areas described aggregate 9,460.66 acres, more or less, in Nye County.

*(b) Reserved Federal Minerals*

T. 17 S., R. 50 E.,
- Sec. 10, lots 9, 10, 11, 13, and 14;
- Sec. 16, NW¼NW¼;
- Sec. 20, NE¼;
- Sec. 21, lots 1 to 4, inclusive;
- Sec. 28, SW¼SW¼, E½SW¼, and SE¼;
- Sec. 29, NW¼NE¼, SW¼SW¼, and E½SE¼;
- Sec. 33, W½NW¼, N½NE¼, and SW¼NE¼;
- Sec. 34, W½ and SE¼.

T. 18 S., R. 50 E.,
- Sec. 2, lots 3 and 4, S½NW¼, and SW¼;
- Sec. 3, lots 1, 2, 3, and SE¼;
- Sec. 4, lot 3, S½NW¼, SW¼, and W½SE¼;
- Sec. 9, E½NW¼ and W½E½;
- Sec. 10, NW¼ and NE¼SW¼;
- Sec. 11, N½NE¼, SE¼SW¼, and SW¼SE¼;
- Sec. 12, E½NE¼.

T. 17 S., R. 51 E.,
- Sec. 31, SE¼NE¼ and E½SE¼;
- Sec. 32, SW¼.

T. 18 S., R. 51 E.,
- Sec. 5, lots 2, 3, 4, S½N½, and S½;
- Sec. 6, lots 1 and 7, SE¼NE¼, and SE¼SW¼;
- Sec. 7, lots 1 and 2;
- Sec. 8, E½ and SW¼;
- Sec. 17, W½E½ and W½;
- Sec. 18, SE¼NE¼ and SE¼;
- Sec. 30, Patent #27–70–0091(within NE¼).

The areas described aggregate 5,570.02 acres, more or less, in Nye County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 24, 2010.

**Wilma A. Lewis,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2010–31209 Filed 12–10–10; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVB00000.L14300000.ET0000; NVN–50507; 10–08807; MO; TAS:14X1109]**

### Public Land Order No. 7754; Extension of Public Land Order No. 6818, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends the withdrawal created by Public Land Order No. 6818 for an additional 20-year period. This extension is necessary to continue protection of the Federal investment of the Bureau of Land Management's Tonopah Administrative

Site in Nye County, Nevada, which would otherwise expire on November 28, 2010.

DATES: *Effective Date:* November 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Pamela C. Ridley, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 1340 Financial Blvd., Reno, Nevada 89502, or 775–861–6530.

**SUPPLEMENTARY INFORMATION:** The purpose for which the withdrawal was first made requires this extension to continue protection of the Tonopah Administrative Site. The withdrawal extended by this order will expire on November 28, 2030, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) the Secretary determines that the withdrawal shall be further extended.

**Order**

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6818 (55 FR 49522 (1990)), which withdrew 5 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws to protect the Federal investment in the Tonopah Administrative Site, is hereby extended for an additional 20-year period until November 28, 2030.

**Authority:** 43 CFR 2310.4.

Dated: November 23, 2010.

**Wilma A. Lewis,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2010–31211 Filed 12–10–10; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLUTY02000.14300000.FR0000.241A.00; UTU–88037]**

### Notice of Realty Action; Recreation and Public Purposes Act Classification for Conveyance of Public Lands in San Juan County, UT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance to San Juan County, under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, a 2.5 acre parcel of public land in San Juan County, Utah. San Juan County proposes to maintain a multi-purpose municipal building in Mexican Hat, Utah, to include fire and emergency services facilities, office space, equipment yard, weatherization services, and elections office.

**DATES:** Interested parties may submit written comments regarding this proposed classification for conveyance of public land until January 27, 2011.

**ADDRESSES:** Comments may be submitted to the Bureau of Land Management Monticello Field Office, 365 North Main, or P.O. Box 7, Monticello, Utah 84535.

**FOR FURTHER INFORMATION CONTACT:** Maxine Deeter, BLM Monticello Field Office, at 435–587–1522, or by e-mail to *maxine_deeter@blm.gov*.

**SUPPLEMENTARY INFORMATION:** The BLM has examined and found the following described public land suitable for classification for conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), and 43 CFR 2740:

**Salt Lake Meridian, Utah**

T. 42 S., R. 19 E.,
Sec. 7, lot 47.

The area described contains 2.5 acres in San Juan County.

The classification is consistent with the Monticello Resource Management Plan, Lands and Realty Decisions LAR–3 and LAR–7, dated November 17, 2008, and is in the public interest. An environmental assessment has been prepared that analyzes the San Juan County application and proposed plans of development and management. A conveyance would be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on patented lands.

A conveyance would also be subject to valid existing rights.

Upon publication of this notice in the **Federal Register**, the land described above is segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act and leasing under the mineral leasing laws.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a public municipal building. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with state and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factors directly related to the suitability of the land for a public municipal building.

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

The BLM State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective February 11, 2011. The lands will not be available for conveyance until after the classification becomes effective.

**Authority:** 43 CFR 2741.5(h).

**Juan Palma,**

*State Director.*

[FR Doc. 2010–31206 Filed 12–10–10; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO956000.L14200000 BJ0000]**

### Notice of Stay of Filing of Plat

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Stay of Filing of Plat.

**SUMMARY:** On Wednesday, November 3, 2010, the Bureau of Land Management,

(BLM) published a Notice of Filing of Plats in the **Federal Register** (75 FR 67766) declaring the intent to file certain plats on Friday, December 3, 2010. The BLM Colorado State Office is publishing this notice to inform the public that the proposed filing of the plat and field notes of the dependent resurvey and surveys in Township 9 South, Range 93 West, Sixth Principal Meridian, Colorado accepted on August 5, 2010, is hereby postponed in order to extend the period of time for interested parties to communicate with the BLM regarding this proposed filing and to extend the period of time for interested parties to protest this action.

**DATES:** Unless there are protests of this action, the filing of the plat described in this notice will happen on February 11, 2011.

**ADDRESSES:** BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

**FOR FURTHER INFORMATION CONTACT;** Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

**SUPPLEMENTARY INFORMATION:** If a protest of this dependent resurvey is received prior to the date of the official filing, the official filing will be stayed pending consideration of the merits of the protest. This particular plat will not be officially filed until after all protests have been accepted or dismissed and become final.

**Randy Bloom,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 2010–31142 Filed 12–10–10; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[2280–665]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 6, 2010. Pursuant to sections 60.13 and 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 28, 2010.

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

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

**ALABAMA**

**Covington County**

Florala Historic District, 23216–24310 Fifth Ave, N Fifth St. 519–1189 S Fifth St. 1113–1115 Fourth St, 22510–22664 Wall St, Florala, 10001050

**Jefferson County**

Dunbar High School, 2715 6th Ave N, Bessemer, 10001051

**COLORADO**

**Denver County**

Sixth Avenue Community Church, 3250 E Sixth Ave, Denver, 10001037

**FLORIDA**

**Orange County**

Lake Ivanhoe Historic Residential District, Roughly Orlando St, Interstate 4, Lakeview St, Edgewater Dr, Orlando, 10001042

**GEORGIA**

**Emanuel County**

Davis—Proctor House, 133 First Ave, Twin City, 10001049

**MARYLAND**

**Talbot County**

Miller's House, Old Wye Mills Rd, Wye Mills, 10001038

**SOUTH CAROLINA**

**Abbeville County**

Upper Long Cane Cemetery, Greenville St (SC HWY 20 N) at junction with Beltline Rd (SC Sec Rd 1–35), Abbeville, 10001039

**Greenwood County**

The Oaks, 114 Old Puckett's Ferry Rd, Coronaca, 10001040

**TENNESSEE**

**Hamilton County**

Hamilton Bridge, Market St over the Tennessee River, Chattanooga, 10001047

**Knox County**

Minvilla, 447 N Broadway, Knoxville, 10001046

**VERMONT**

**Chittenden County**

Moran Municipal Generating Station, 475 Lake St, Burlington, 10001041

**WASHINGTON**

**Lincoln County**

Lincoln Hotel, 301 W Sherlock St, Harrington, 10001044

**Skagit County**

Northern State Hospital, Roughly bounded by Thompson Dr to the S, Hemlick Dr to the E, Hub Dr to the W, and ¼ mi S of Mosier Rd to the N, Sedro Woolley, 10001043

**Spokane County**

Muzzy-Shine House, 150 W Mission Ave, Spokane, 10001045

**WYOMING**

**Carbon County**

Carbon Cemetery, County Road 115, Carbon, 10001048

[FR Doc. 2010–31231 Filed 12–10–10; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[2280–665]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 13, 2010. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 28, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

**ARIZONA**

**Pima County**

Santa Rita Mountains, Coronado National Forest, Tucson Vicinity, 100001058

**COLORADO**

**Lake County**

Matchless Mine (Mining Industry in Colorado, MPS), E 7th Rd, Leadville, 10001088

**Larimer County**

Provost Homestead—Herring Farm Rural Historic Landscape, 2405 N Overland Trail, LaPorte, 10001053

**INDIANA**

**Allen County**

Fort Wayne Park and Boulevard System Historic District (Park and Boulevard System of Fort Wayne, Indiana MPS), Roughly including the following parks and adjacent right-of-way: Franke, McCormick, McCulloch, McMillen, Memorial, Fort Wayne, 10001099

**Floyd County**

Hedden's Grove Historic District, 1600 Blocks of Hedden Park and Hedden Court, 2410–2418 Charlestown Rd, New Albany, 10001076

William Young House, 509 W Market St, New Albany, 10001075

**Jackson County**

Montgomery, T. Harlan and Helen, House, 628 N Poplar St, Seymour, 10001080

**Knox County**

Enoco Coal Mine, N Side of Grundman Rd, 1.5 mi S of Bruceville, Bruceville, 10001100

**Kosciusko County**

Mock School (Indiana's Public Common and High Schools MPS), NW corner of N 550 E and E 875 N, Syracuse, 10001081

**Lake County**

Allman, Walter, House, 102 S E St, Crown Point, 10001077

Ibach House, 1908 Ridge Rd, Munster, 10001078

Margan—Skinner—Boyd Homestead, 111 E 73rd Ave, Merrillville, 10001079

**Marion County**

Plesanton in Irvington Historic District (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by E Michigan St, Pleasant Run Pkwy, N Dr, and Emerson Ave, Indianapolis, 10001083

**INDIANA**

**Marshall County**

Chief Menominee Memorial Site, S Peach Rd, N of W 13th Rd, Plymouth, 10001082

**Porter County**

Valparaiso Downtown Commercial Historic District (Boundary Increase), NW block of Lincolnway and Napoleon, Valparaiso, 10001074

**Steuben County**

Angola Commercial Historic District, Roughly bounded by Superior, Gale, Gilmore & Martha Sts, Angola, 10001073

**IOWA**

**Wapello County**

Hofmann Building (Ottumwa MPS), 101 S Market St, Ottumwa, 10001085

North Fellows Historic District (Post-Wold War II Development in Ottumwa, IA 1944–1959 MPS), 1200 Block N Fellows St and 1204–1212 N Elm St, Ottumwa, 10001087

**MARYLAND**

**Baltimore Independent City**

Edmondson Avenue Historic District, Winchester St, Braddish Ave N of Edmondson Ave, Edmondson Ave W of Braddish Ave, Franklintown Rd N of W Franklin St, Baltimore (Independent City), 10001084

**MASSACHUSETTS**

**Berkshire County**

Lee Station, 109 Railroad St, Lee, 10001067

**Suffolk County**

Egleston Substation, 3025 Washington St, Boston, 10001066

**Worcester County**

Crossman Bridge, Gilbert Rd over Quaboag River, Warren, 10001065

**MINNESOTA**

**Hennepin County**

Cedar Square West, 1600 S Sixth St, Minneapolis, 10001090

**Steele County**

Minnesota State Public School for Dependent and Neglected Children, Roughly bounded by W Hills Dr, State Ave, and Florence Ave, Owatonna, 10001089

**NEVADA**

**Lee County**

East Sanford Historic District (Lee County MPS), Bounded roughly by Charlotte Ave, Goldsboro Ave, N First St, S Second St, and S Eight St, Sanford, 10001096

**NEW HAMPSHIRE**

**Cheshire County**

Shedd—Porter Memorial Library, 3 Main St, Alstead, 10001086

**NORTH CAROLINA**

**Alamance County**

Durham Hosiery Mill No. 15, 301 W Washington St, Mebane, 10001054

Glencoe School, 2649 Union Ridge Rd, Glencoe, 10001055

**Buncombe County**

South Montreat Road Historic District, Along Montreat Rd, 102 First St, 100 Third St, 100 Ninth St, and 101 Beech St, Black Mountain, 10001056

**Davie County**

Farmington Historic District, Farmington Rd, NC HWY 801 N, Cemetery Rd, Roland Rd, and Hartman Lane, Farmington, 10001059

Win-Mock Farm Dairy, 168 E Kinderton Way, Davie, 10001057

**Durham County**

Stokesdale Historic District (Durham MRA), Roughly bounded by Fayetteville St, Umstead St, Lawson St, Moline St, Concord St, and Dunstan St, Durham, 10001093

**Guilford County**

Washington Street Historic District, Portions of eight blocks on Washington, Centennial, Fourth, and Hobson Sts, Eccles Pl, and Gaylord Ct, High Point, 10001094

**Haywood County**

Spread Out Historic District, Roughly bounded by N Main St, Walnut St, and Beech St, Waynesville, 10001095

**Wake County**

Bailey—Estes House (Wake County MPS), 9020 Mangum Dairy Rd, Wake Forest, 10001097

Harris, Harwell Hamilton and Jean Bangs, House and Office (Early Modern Architecture Associated with NCSU School of Design Faculty MPS), 122 Cox Ave, Raleigh, 10001098

**PENNSYLVANIA**

**Allegheny County**

East Liberty Commercial Historic District, Roughly bounded by Penn, Sheridan, and Centre Aves and Kirkwood and S Whitfield Sts, Pittsburgh, 10001072

New Granada Theater, 2007–2013 Centre Ave, Pittsburgh, 10001071

**Philadelphia County**

Rittenhouse Historic District Boundary Increase, Roughly bounded by the Center City West Historic District, S 21st St, the Rittenhouse Historic District, and S 17th St, Philadelphia, 10001070

**Wayne County**

Patriotic Order Sons of America Washington Camp 422, 465 S Sterling Rd, Dreher Township, 10001068

**Westmoreland County**

Fairview Park, S side of Old PA22, approx 1.5 mi E of Delmont, Salem Township, 10001069

**TENNESSEE**

**Putnam County**

First Presbyterian Church, 20 N Dixie Ave, Cookeville, 10001060

VIRGINIA

Alleghany County

Jefferson School, A Street, Clifton Forge, 10001061

Gloucester County

Gloucester Downtown Historic District, Seven blocks of Main St from the courthouse circle to Ware House Rd, Gloucester, 10001063

Hampton Independent City

Hampton Downtown Historic District, Roughly bounded by Franklin St, Lincoln St, Settlers Landing Rd, Eaton St, Hampton (Independent City), 10001062

Shenandoah County

Bauserman Farm, 10107 South Middle Road, Mount Jackson, 10001064

WISCONSIN

Manitowoc County

GALLINIPPER Shipwreck (Schooner) (Great Lakes Shipwreck Sites of Wisconsin MPS), 9.5 E of Hika Bay Park in Lake Michigan, Centerville, 10001091

HOME Shipwreck (Schooner) (Great Lakes Shipwreck Sites of Wisconsin MPS), 9 mi NE of Hika Park in Lake Michigan, Centerville, 10001092

Related Action: Request for RELOCATION has been made for the following resource:

VIRGINIA

Newport News Independent City

Causey's Mill, 11700 Warwick Rd, Newport News (Independent City), 08000078

[FR Doc. 2010–31233 Filed 12–10–10; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

[2280–665]

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

*Correction*

In notice document 2010–30112 beginning on page 74079 in the issue of Tuesday, November 30, 2010, make the following correction:

On page 74079, in the first column, in the first full paragraph, in the 22nd line, "November 30, 2010" should read "December 15, 2010".

[FR Doc. C1–2010–30112 Filed 12–10–10; 8:45 am]

BILLING CODE 1505–01–D

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

### United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Arroyo Colorado South Levee Rehabilitation Project in Cameron and Hidalgo Counties, TX

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

**ACTION:** Notice of Availability of Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508), and the United States Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice of availability of the Final Environmental Assessment and FONSI for Arroyo Colorado South Levee Rehabilitation Project located in Cameron and Hidalgo Counties, Texas are available. An environmental impact statement will not be prepared.

**FOR FURTHER INFORMATION CONTACT:** Lisa Santana, Natural Resources Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4707; e-mail: *lisa.santana@ibwc.gov.*

*Availability:* Single hard copies of the Final Environmental Assessment and Finding of No Significant Impact are available by request at the above address. Electronic copies are available from the USIBWC homepage at *http://www.ibwc.gov/Organization/Environmental/reports_studies.html.*

Dated: December 6, 2010.

**Steven Fitten,**

*Attorney.*

[FR Doc. 2010–31141 Filed 12–10–10; 8:45 am]

BILLING CODE 7010–01–P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–690]

### Certain Printing and Imaging Devices and Components Thereof; Notice of Commission Determination To Extend the Deadline for Filing Submissions on Remedy, the Public Interest and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline for filing submissions on remedy, the public interest, and bonding in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on October 26, 2009, based on a complaint filed by Ricoh Company, Ltd. of Tokyo, Japan; Ricoh Americas Corporation of West Caldwell, New Jersey; and Ricoh Electronics, Inc. of Tustin, California. 74 FR 55065 (Oct. 26, 2009). The complaint alleged, *inter alia,* violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain printing and imaging devices and components thereof by reason of infringement of U.S. Patent Nos. 6,209,048; 6,212,343; 6,388,771; 5,764,866; and 5,863,690 ("the '690 patent"). The complaint named Oki Data Corporation of Tokyo, Japan and Oki Data Americas, Inc. of Mount Laurel,

New Jersey (collectively "Oki") as respondents.

On September 23, 2010, the ALJ issued his final ID finding that Oki violated section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain printing and imaging devices and components thereof by reason of infringement of several claims in the '690 patent. On November 22, 2010, the Commission determined to review the final ID in part. The Commission asked for initial submissions on the issues under review as well as on remedy, the public interest and bonding by December 9, 2010, and reply submissions by December 17, 2010.

The Commission has determined to extend the deadline for initial submissions on remedy, the public interest, and bonding to December 17, 2010, and extend the deadline for reply submissions on remedy, the public interest, and bonding to December 23, 2010. This extension applies to all parties and members of the public.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: December 6, 2010.

**William R. Bishop,**

*Acting Secretary to the Commission.*

[FR Doc. 2010–31124 Filed 12–10–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Information Collection Extension Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on information collection extension request in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Civil Rights Center within the Office of the Assistant Secretary for Administration and Management is soliciting comments concerning the proposed extension of the collection of the Compliance Information Report—29 CFR part 31 (Title VI of the Civil Rights Act), Nondiscrimination—Disability—29 CFR part 32 (section 504 of the Rehabilitation Act), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act). A copy of the proposed extension of the information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. In addition, a copy of the ICR in alternate formats of large print and electronic file on computer disk are available upon request.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before February 11, 2011.

**ADDRESSES:** Comments should be sent to Ramon Suris-Fernandez, Director of the Civil Rights Center. Electronic mail is the preferred method of submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the ICR and sent to *civilrightscenter@dol.gov*. Brief comments (maximum of five pages), clearly identified as pertaining to the ICR, may be submitted by facsimile machine (Fax) to (202) 693–6505. Where necessary, hard copies of comments, clearly identified as pertaining to the ICR, may also be delivered to the Civil Rights Center Director at the U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Because of problems with U.S. Postal Service mail delivery, the Civil Rights Center suggests that those submitting comments by means of the U.S. Postal Service should place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions, whether by U.S. Postal Service, e-mail, fax transmittal, or other means will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at the telephone numbers listed below.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of the ICR will be made available, upon request, in large print or electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or obtain the ICR in an alternate format contact the Civil Rights Center at (202) 693–6500 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

**FOR FURTHER INFORMATION CONTACT:** Roger Ocampo, Civil Rights Center, (202) 693–6501 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Compliance Information Report and its information collection is designed to ensure that programs or activities funded in whole or in part by the Department of Labor operate in a nondiscriminatory manner. The Report requires such programs and activities to collect, maintain and report upon request from the Department, race, ethnicity, sex, age and disability data for program applicants, eligible applicants, participants, terminees, applicants for employment and employees.

#### II. Desired Focus of Comments

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 a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. *e.g.*, permitting electronic submissions of responses.

#### III. Current Actions

The Department of Labor seeks an extension of the current OMB approval of the paperwork requirements in the Compliance Information Report. Extension is necessary to ensure nondiscrimination in programs or

activities funded in whole or in part by the Department of Labor.

*Type of Review:* Extension.

*Agency:* Civil Rights Center, Office of the Assistant Secretary for Administration and Management.

*Title:* Compliance Information Report—29 CFR part 31 (Title VI), Nondiscrimination-Disability—29 CFR part 32 (section 504), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act).

*OMB Number:* 1225–0077.

*Affected Public:* State, local or Tribal governments.

*Estimated Number of Respondents:* 39,233,285.

*Frequency:* Recurrent.

*Total Burden Cost (capital/startup):* $0.00.

*Total Estimated Annual Responses:* 2,153.

*Estimated Average Time Per Response:* .33 hours.

*Total Burden Cost (operating/maintenance):* $151,743.20.

Comments submitted in response to this comment request will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 7th day of December, 2010.

**Ramon Suris-Fernandez,**

*Director, Civil Rights Center.*

[FR Doc. 2010–31193 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–23–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,551]**

### Vaughan Furniture Company, Galax, VA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated November 4, 2010, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Vaughn Furniture Company, Galax, Virginia (subject firm). The determination was issued on October 5, 2010. The Department's Notice of Determination was published in the **Federal Register** on October 25, 2010 (75 FR 65520). The workers supply administrative and support services in support of furniture production at foreign facilities.

The initial investigation resulted in a negative determination based on the findings that subject firm sales increased during the relevant period and the subject firm did not shift to/acquire from a foreign country the supply of services like or directly competitive with those supplied by the subject workers. The investigation also revealed that the workers at the subject firm did not qualify to apply for TAA as adversely-affected secondary workers.

In the request for reconsideration, the worker states that he was part of the "B.C. Vaughn plant" and "should not be considered an administrative and support services worker." The worker further states that his position "was essential to the production operation" because he was responsible for scheduling trucks used to move furniture from the production plant to the warehouse.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 3rd day of December, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–31134 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–72,493]**

### Ananke, Inc., Providence, RI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 25, 2010, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on October 6, 2010, and the Notice of Determination was published in the **Federal Register** on October 25, 2010 (75 FR 65520–21).

The initial investigation resulted in a negative determination based on the findings that neither the subject firm nor a client firm shifted to/acquired from a foreign country the supply of services like or directly competitive with the services supplied by the workers, that the subject firm did not import like or directly competitive services during the relevant period, and that the subject workers are not adversely affected secondary workers.

The request for reconsideration states that "Ananke Inc. performed application packaging services for John Hancock * * * In September 2009, John Hancock replaced * * * Ananke Inc. with * * * Cognizant Technology Solutions (an offshoring/outsourcing company)" and included support documentation.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 1st day of December, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–31137 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,824]**

### Honeywell International, Inc., Automation and Control Solutions Division, Including On-Site Leased Workers From Manpower, Spherion, and Securitas, Rock Island, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment

Assistance on July 30, 2010, applicable to workers of Honeywell International, Inc., Automation and Control Solutions Division, Rock Island, Illinois. The notice was published in the **Federal Register** on August 13, 2010 (75 FR 49531).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of rubber boots.

The company reports that workers leased from Manpower, Spherion and Securitas were employed on-site at the Rock Island, Illinois location of Honeywell International, Inc., Automation and Control Solutions Division. The Department has determined that these workers were sufficiently under the control of Honeywell International, Inc., Automation and Control Solutions Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Manpower, Spherion, and Securitas working on-site at the Rock Island, Illinois location of Honeywell International, Inc., Automation and Control Solutions Division.

The amended notice applicable to TA–W–73,824 is hereby issued as follows:

All workers of Honeywell International, Inc., Automation and Control Solutions Division, including on-site leased workers from Manpower, Spherion and Securitas, Rock Island, Illinois, who became totally or partially separated from employment on or after March 29, 2009, through July 30. 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 7th day of December 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–31164 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,420]**

### Frank Russell Company, Administrative Service Center, Including On-Site Leased Workers From Volt Services, Tacoma, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 2010, applicable to workers of Frank Russell Company, Administrative Service Center, Tacoma, Washington. The notice was published in the **Federal Register** on August 13, 2010 (75 FR 49531).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers supply administrative support services for financial investments.

The company reports that workers leased from Volt Services were employed on-site at the Tacoma, Washington location of Frank Russell Company, Administrative Service Center. The Department has determined that these workers were sufficiently under the control of Frank Russell Company, Administrative Service Center to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Volt Services working on-site at the Tacoma, Washington location of Frank Russell Company, Administrative Service Center.

The amended notice applicable to TA–W–74,420 is hereby issued as follows:

All workers of Frank Russell Company, Administrative Service Center, including on-site leased workers from Volt Services, Tacoma, Washington, who became totally or partially separated from employment on or after July 21, 2009, through July 30, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 6th day of December 2010.

**Michael W. Jaffe,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–31166 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–74,593]**

### Whirlpool Corporation, Including On-Site Leased Workers From Career Solutions TEC Staffing and Andrews International, Fort Smith, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 6, 2010, applicable to workers of Whirlpool Corporation, including on-site leased workers from Career Solutions TEC Staffing, Fort Smith, Arkansas. The notice was published in the **Federal Register** on October 25, 2010 (75 FR 65520).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of refrigerators and trash compactors.

The company reports that workers leased from Andrews International were employed on-site at the Fort Smith, Arkansas location of Whirlpool Corporation. The Department has determined that these workers were sufficiently under the control of Whirlpool Corporation to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Andrews International working on-site at the Fort Smith, Arkansas location of Whirlpool Corporation.

The amended notice applicable to TA–W–74,593 is hereby issued as follows:

All workers of Whirlpool Corporation, including on-site leased workers from Career Solutions TEC Staffing and Andrews International, Fort Smith, Arkansas, who became totally or partially separated from employment on or after October 2, 2010, through October 6, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 6th day of December 2010.

**Michael W. Jaffe,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–31167 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–74,336]

### Polaris Industries, Including On-Site Leased Workers From Westaff and Supply Technologies, Osceola, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 26, 2010, applicable to workers of Polaris Industries, including on-site leased workers from Westaff, Osceola, Wisconsin. The notice was published in the **Federal Register** on September 15, 2010 (75 FR 56143).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of components for recreational vehicles.

The company reports that workers leased from Supply Technologies were employed on-site at the Osceola, Wisconsin location of Polaris Industries. The Department has determined that these workers were sufficiently under the control of Polaris Industries to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Supply Technologies working on-site at the Osceola, Wisconsin location of Polaris Industries.

The amended notice applicable to TA–W–74,336 is hereby issued as follows:

All workers of Polaris Industries, including on-site leased workers from Westaff and Supply Technologies, Osceola, Wisconsin, who became totally or partially separated from employment on or after June 28, 2009, through August 26, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 6th day of December 2010.

**Michael W. Jaffe,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–31165 Filed 12–10–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–72,121]

### General Motors Company, Formerly Known as General Motors Corporation, Technical Center, Including On-Site Leased Workers From Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G–Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems and Modern Engineering/Professional Services, Excluding Workers of the Global Purchasing and Supply Chain Division, Warren, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on April 30, 2010, applicable to workers of General Motors Company, formerly known as General Motors Corporation, Technical Center, including on-site leased workers from Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G–Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., and Tek Systems, excluding workers of the Global Purchasing and Supply Chain Division, Warren, Michigan. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30070).

At the request of the State, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the engineering and other technical support of automotive production at affiliated plants.

The company reports that workers leased from Modern Engineering/Professional Services were employed on-site at the Warren, Michigan location of General Motors Company, formerly known as General Motors Corporation, Technical Center. The Department has determined that on-site workers from Modern Engineering/Professional Services were sufficiently under the control of General Motors Company, formerly known as General Motors Corporation, Technical Center to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Modern Engineering/Professional Services working on-site at the Warren, Michigan location of General Motors Company, formerly known as General Motors Corporation, Technical Center.

The amended notice applicable to TA–W–72,121 is hereby issued as follows:

All workers of General Motors Company, formerly known as General Motors Corporation, Technical Center, including on-site leased workers from Aerotek, Bartech Group, CDI Professional Services, EDS/HP Enterprise Services, Engineering Labs, Inc., Global Technology Associates Limited, G–Tech Professional Staffing, Inc., Jefferson Wells, Kelly Services, Inc., Optimal, Inc., Populus Group, RCO Engineering, Inc., Tek Systems and Modern Engineering/Professional Services, excluding workers of the Global Purchasing and Supply Chain Division, Warren, Michigan, who became totally or partially separated from employment on or after August 14, 2008, through April 30, 2010, 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 6th day of December 2010.

**Michael W. Jaffe,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–31163 Filed 12–10–10; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *November 29, 2010 through December 3, 2010.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 73,888 | Beverage-Air Corporation, Ali N.A. Corp., Leased Workers from Manpower, Aerotek, Ajilon and Vernon Group. | Brookville, PA | April 6, 2009. |
| 74,274 | Vail-Ballou Press, Inc., Maple Press | Binghamton, NY | June 21, 2009. |
| 74,576 | Electronic Cable Specialists, Inc., Tensolite, LLC | Franklin, WI | August 27, 2009. |
| 74,598 | Z–Pro International, Inc., Leased Workers from Resource Staffing Services. | Portland, OR | September 3, 2009. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,674 | A.R. Knitwear Company, Inc. | North Bergen, NJ | September 20, 2009. |
| 74,735 | Texas Hydraulics, Inc., Dover Corporation | Athens, TN | October 7, 2009. |
| 74,860 | HMP Industries, Inc., Leased Workers from Staffworks, Inc | Ansonia, CT | November 9, 2009. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,519 | Freeport-McMoran Copper & Gold, Information Technology Department. | Phoenix, AZ | July 17, 2009. |
| 74,629 | West Dermatology Medical Management, Dermatology Management, LLC, Leased Workers T&T Staffing and Ampien Staffing. | Redlands, CA | August 30, 2009. |
| 74,763 | Sungard Business Systems, LLC, Global Plus Division | Malvern, PA | October 15, 2009. |
| 74,788 | JPMorgan Chase & Co., Treasury and Securities Services, Worldwire Security, etc. | Dallas, TX | October 21, 2009. |
| 74,802 | ET Publishing International, Inc., Subscription Department | Miami, FL | October 18, 2009. |
| 74,808 | Ossur Americas, Inc., Leased Workers from Express Employment Professionals. | Allentown, PA | October 29, 2009. |
| 74,808A | Ossur Americas, Inc., Leased Workers from Express Employment Professionals. | Paulsboro, NJ | October 29, 2009. |
| 74,833 | Franklin Electric Company, Inc., Leased Workers from Peoplelink Staffing Solutions. | Oklahoma City, OK | November 3, 2009. |
| 74,836 | Journal Community Publishing Group, Graphic Ad Design Department. | Waupaca, WI | October 30, 2009. |
| 74,859 | The Mega Life & Health Ins. Co., Healthmarkets, Leased Workers Computer Solutions and Software, etc. | North Richland Hills, TX | November 1, 2009. |
| 74,879 | Xella Aircrete North America, Inc., Xella International, Leased Workers from Ambassador Staffing. | Adel, GA | November 15, 2009. |
| 74,880 | Lafarge North America, Inc., a Subsidiary of Lafarge | Seattle, WA | November 10, 2009. |
| 74,888 | Thomson Reuters, Hubbard One Division | Chicago, IL | November 16, 2009. |

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,119 | Design Metal Plating, Inc | Emporium, PA | May 11, 2009. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,599 | Glaston America, Inc., Glaston Services Ltd., 2615 River Road | Cinnaminson, NJ. | |
| 74,602 | UPS Worldwide Forwarding, Inc., Information Services-TTG Division. | Louisville, KY. | |

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,804 | Metropolitan Urological Specialist, P.C | Florissant, MO. | |
| 74,804A | Metropolitan Urological Specialist, P.C | Chesterfield, MO. | |
| 74,864 | ShipCarsNow, Inc., Union Pacific Corporation | Auburn Hills, MI. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,777 | Fraser Timber Limited | Ashland, ME. | |
| 74,837 | Journal Register Company, Morning Star Division | Mount Pleasant, MI. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 74,718 | SecurAmerica, Workers On-Site at Dell Products LP | Winston-Salem, NC. | |
| 74,930 | Hotels.com, An Expedia, Inc. Company | Arlington, TX. | |

I hereby certify that the aforementioned determinations were issued during the period of *November 29, 2010 through December 3, 2010.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: December 7, 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–31162 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 23, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 23, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 6th, day of December 2010.

**Michael Jaffe,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

APPENDIX

[TAA petitions instituted between 11/29/10 and 12/3/10]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 74932 | Verixon (Workers) | Erie, PA | 11/29/10 | 11/15/10 |
| 74933 | Startek (Workers) | Grand Junction, CO | 11/29/10 | 11/01/10 |
| 74934 | ILpea Incorporated (State/One-Stop) | Fort Smith, AR | 11/30/10 | 11/29/10 |
| 74935 | Husqvarna Turf Care (State/One-Stop) | Beatrice, NE | 11/30/10 | 11/29/10 |
| 74936 | Teleperformance USA (Workers) | Akron, OH | 11/30/10 | 11/29/10 |
| 74937 | Hachette Book Group (Company) | Boston, MA | 11/30/10 | 11/29/10 |
| 74938 | BIOMET (Workers) | Palm Beach Gardens, FL | 11/30/10 | 11/29/10 |
| 74939 | DMI Furniture, Inc. (Company) | Huntingburg, IN | 11/30/10 | 11/23/10 |
| 74940 | New Process Gear (Company) | East Syracuse, NY | 11/30/10 | 11/29/10 |
| 74941 | Georgia Pacific, LLC (Company) | Hamlet, NC | 11/30/10 | 11/24/10 |
| 74942 | Harris Corporation (Company) | Pottstown, PA | 11/30/10 | 11/29/10 |

APPENDIX—Continued

[TAA petitions instituted between 11/29/10 and 12/3/10]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 74943 | Assurant (Workers) | Woodbury, MN | 11/30/10 | 11/23/10 |
| 74944 | Kop-Flex, Inc. (Union) | Hanover, MD | 12/01/10 | 10/12/10 |
| 74945 | RR Donnelley (Company) | Harrisonburg, VA | 12/01/10 | 11/30/10 |
| 74946 | Russound/FMP, Inc. (Company) | Newmarket, NH | 12/01/10 | 11/16/10 |
| 74947 | Eastman Kodak Company (Company) | Wheeling, IL | 12/01/10 | 11/11/10 |
| 74948 | Robin Manufacturing USA, Inc. (Company) | Hudson, WI | 12/02/10 | 12/01/10 |
| 74949 | ProDrive Systems (Workers) | Ogdensburg, NY | 12/02/10 | 12/01/10 |
| 74950 | Navistar International Truck & Engine Corporation (Union) | Springfield, OH | 12/02/10 | 11/29/10 |
| 74951 | STATS ChipPAC, Inc. (Company) | Milpitas, CA | 12/02/10 | 11/11/10 |
| 74952 | Johnston Textiles, Inc. (Company) | Opp, AL | 12/02/10 | 12/01/10 |
| 74953 | V.I. Prewett & Son, Inc. (Company) | Fort Payne, AL | 12/02/10 | 12/01/10 |
| 74954 | vCustomer Corporation (State/One-Stop) | Kirkland, WA | 12/02/10 | 11/30/10 |
| 74955 | Canal Sportswear, Inc. (Workers) | New York, NY | 12/02/10 | 11/22/10 |
| 74956 | Riverside Furniture Company (State/One-Stop) | Fort Smith, AR | 12/02/10 | 12/01/10 |
| 74957 | Stet Graphics, Inc. (Workers) | Roiling Meadows, IL | 12/03/10 | 12/02/10 |
| 74958 | Tenneco, Inc. (State/One-Stop) | Cozad, NE | 12/03/10 | 12/02/10 |
| 74959 | Herskovits Corporation (Company) | Fall River, MA | 12/03/10 | 11/23/10 |

[FR Doc. 2010–31161 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,170]**

### SuperMedia, LLC, Formerly Known as Idearc Media, LLC, a Subsidiary of SuperMedia Information Services, LLC Publishing Group, Troy, NY; Notice of Revised Determination on Reconsideration

By application dated July 16, 2010 petitioners requested administrative reconsideration of the Department's negative determination regarding the eligibility of workers and former workers of SuperMedia, LLC, formerly known as Idearc Media, LLC, a Subsidiary of SuperMedia Information Services, LLC, Troy, New York, to apply for Trade Adjustment Assistance. On August 13, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. The Notice was published in the **Federal Register** on October 25, 2010 (75 FR 65515). Workers at the subject firm are engaged in employment related to the production of telephone directories.

Based on the information obtained during the reconsideration investigation, the Department determines that the subject firm shifted to a foreign country a significant proportion of the services like or directly competitive with those provided by the Publishing Group.

**Conclusion**

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of the subject firm, who are engaged in employment related to the production of telephone directories, 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 SuperMedia, LLC, formerly known as Idearc Media, LLC, a Subsidiary of SuperMedia Information Services, LLC, Publishing Group, Troy, New York, who became totally or partially separated from employment on or after December 14, 2008, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 3rd day of December, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–31135 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,722]**

### Sojitz Corporation of America, a Subsidiary of Sojitz Corporation, Forest Products Department, Seattle, WA; Notice of Revised Determination on Reconsideration

By application dated September 23, 2010, a State of Washington workforce official, on behalf of two workers, requested administrative reconsideration of the Department's negative determination regarding the eligibility of workers and former workers of Sojitz Corporation of America, a subsidiary of Sojitz Corporation, Forest Products Department, Seattle, Washington (subject firm) to apply for Trade Adjustment Assistance. On October 18, 2010, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers of the subject firm. The Notice was published in the **Federal Register** on October 25, 2010 (75 FR 65515). The subject workers are engaged in employment related to the supply of services related to the trade of forest products.

During the reconsideration investigation, the Department received information that revealed that the subject firm had shifted to a foreign country the supply of services like or directly competitive with the services supplied by the subject workers, and that the shift to Canada contributed importantly to worker group separations at the subject firm.

## Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of the subject firm, who are engaged in employment related to the supply of forest product 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 Sojitz Corporation of America, a subsidiary of Sojitz Corporation, Forest Products Department, Seattle, Washington, who became totally or partially separated from employment on or after March 15, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 3rd day of December, 2010.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2010–31136 Filed 12–10–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket Nos. OSHA–2006–0028, OSHA–2007–0041]**

### Expansion of the Scope of NRTL Recognition of MET Laboratories, Inc.; Correction of the Scope of NRTL Recognition of FM Approvals, LLC

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of MET Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7. This notice also proposes a correction to the scope of recognition of FM Approvals, LLC.

**DATES:** The expansion of recognition of MET Laboratories, Inc., becomes effective on December 13, 2010. For the FM Approvals, LLC, correction, submit information or comments, or any request for extension of the time to comment, on or before December 28, 2010. All submissions must bear a postmark or provide other evidence of the submission date. Do not submit comments or other responses regarding the expansion of recognition of MET Laboratories, Inc.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* Submit comments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Fax:* If submissions, including attachments, are no longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, or messenger or courier service:* Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2007–0041, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, and messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA–2007–0041). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be made available online at *http://www.regulations.gov.*

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

*Extension of comment period:* Submit requests for an extension of the comment period on or before December 28, 2010 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

### Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it is expanding recognition of MET Laboratories, Inc., (MET) as an NRTL. MET's expansion covers the use of additional test standards. OSHA's current scope of recognition for MET is in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing such an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.* Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

MET submitted two applications, dated October 6 and November 3, 2008, to expand its recognition to include 18 additional test standards. (Exs. 2 and 3—MET expansion applications dated 10/6/2008 and 11/3/2008.) The NRTL Program staff determined that these standards are "appropriate test

standards" within the meaning of 29 CFR 1910.7(c). In connection with this request, NRTL Program staff did not perform any on-site review of MET's recognized site. The staff only performed a comparability analysis,[1] and recommended expansion of MET's recognition to include the 12 test standards listed below. The Agency published a preliminary notice announcing the expansion application in the **Federal Register** on July 28, 2010 (75 FR 44289). OSHA requested comments on the notice by August 12, 2010; OSHA received no comments in response to this notice. OSHA now is proceeding with this final notice to grant MET's expansion application.

All public documents pertaining to the MET application are available for review by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0028.

**Final Decision and Order**

NRTL Program staff examined MET's application, the comparability analysis, and other pertinent information. Based on this examination and the analysis, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions specified below. Pursuant to the authority granted by 29 CFR 1910.7, OSHA hereby expands the recognition of MET, subject to this limitation and these conditions.

*Limitation*

OSHA limits the expansion of MET's recognition to testing and certification of products for demonstration of conformance to the following test standards, each of which OSHA determines is an appropriate test standard within the meaning of 29 CFR 1910.7(c):

UL 244A Solid State Controls for Appliances
UL 412 Refrigeration Unit Coolers
*UL 458 Power Converters/Inverters and Power Converter/Inverter Systems for Land Vehicles and Marine Crafts
UL 466 Electric Scales
UL 561 Floor-Finishing Machines
UL 1230 Amateur Movie Lights
UL 1278 Movable and Wall or Ceiling Hung Electric Room Heaters
UL 1594 Sewing and Cutting Machines
UL 1795 Hydromassage Bathtubs
UL 1951 Electric Plumbing Accessories
UL 1996 Electric Duct Heaters
UL 2021 Fixed and Location Dedicated Electric Room Heaters

*OSHA approves this standard for testing and certification of products for use within recreational vehicles and mobile homes.

The designations and titles of these test standards were current at the time of the preparation of this notice.

OSHA limits recognition of any NRTL for a particular test standard to equipment or materials (*i.e.*, products) for which OSHA standards require third-party testing and certification before use of the product in the workplace. Consequently, if a test standard also covers any product for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (*see* OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*Conditions*

MET also must abide by the following conditions of the recognition, in addition to those conditions already required by 29 CFR 1910.7:

1. MET must allow access to its facilities and records to ascertain continuing compliance with the terms of its recognition, and to perform investigations as OSHA deems necessary;

2. If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard-developing organization of this concern, and provide that organization with appropriate relevant information upon which it bases its concern;

3. MET must not engage in, or permit others to engage in, any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited NRTL without clearly indicating the specific equipment or material to which this recognition applies, and also clearly indicating that its recognition is limited to specific products;

4. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details of these changes;

5. MET will meet all the terms of its recognition, and will always comply with all OSHA policies pertaining to this recognition; and

6. MET will continue to meet the requirements for recognition in all areas covered by its scope of recognition.

**Correction to FM Approvals Scope of Recognition**

On October 25, 2010, OSHA published a notice (75 FR 65521) to expand the recognition of FM Approvals, LLC (FM). One of the standards added to FM's scope was UL 484 (Air Room Air Conditioners). Subsequent to the publication, FM informed OSHA that it instead intended to request recognition of UL 464 (Audible Signal Appliances). OSHA determined that FM has the capability for this standard, and proposes to add it to FM's scope of NRTL recognition.

OSHA welcomes public comments as to whether FM meets the requirements specified by 29 CFR 1910.7 for the proposed correction to its scope of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the correction to FM's scope of recognition and other pertinent documents, and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2007–0041.

The NRTL Program staff will review all timely comments and, after addressing the issues raised by these comments, will recommend whether to correct FM's scope of recognition. The Assistant Secretary will make the final decision on granting the request, and, in

[1] This analysis involves determining whether the testing and evaluation requirements of test standards already in an NRTL's scope are comparable to the requirements in the standards requested by the NRTL.

making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**. However, because OSHA is only correcting the recognition, if OSHA receives no comments, it will add the standard to FM's scope without publishing a notice of final decision.

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on December 8, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–31190 Filed 12–10–10; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (10–160)]**

### National Environmental Policy Act: Scientific Balloon Program

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Finding of No Significant Impact.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508); and NASA policy and procedures (14 CFR part 1216, subpart 1216.3); NASA has made a Finding of No Significant Impact (FONSI) with respect to its proposed increase in scientific balloon launches at the Columbia Scientific Balloon Facility (CSBF). CSBF would launch up to 10 additional scientific balloons per year from CSBF Fort Sumner, New Mexico, while launches from CSBF Palestine, Texas would remain at current levels.

**ADDRESSES:** Copies of the final Scientific Balloon Program Programmatic Environmental Assessment (PEA) may be viewed at the following locations:

(a) Fort Sumner Public Library, 235 West Sumner Avenue, Fort Sumner, New Mexico 88119 (575–355–2832).

(b) Palestine Public Library, 1101 North Cedar Street, Palestine, Texas 75801 (903–729–4121).

(c) NASA Headquarters Library, Room 1J20, 300 E Street, SW., Washington, DC 20546–0001 (202–358–0168).

On the Internet at: *http://sites.wff.nasa.gov/code 250/docs/BPO_PEA.html.*

A limited number of hard copies of the final PEA are available by contacting: Joshua Bundick, NEPA Program Manager, NASA Wallops Island Flight Facility, Code 250.W, Wallops Island, VA 23337.

**FOR FURTHER INFORMATION CONTACT:** Joshua Bundick, (757) 824–2319 (phone); (757) 824–1819 (fax).

**SUPPLEMENTARY INFORMATION:** NASA has reviewed the Programmatic Environmental Assessment (PEA) prepared for the scientific balloon launches at the Columbia Scientific Balloon Facility (CSBF) and has concluded that the PEA represents an accurate and adequate analysis of the scope and level of associated environmental impacts. NASA hereby incorporates the PEA by reference in the Finding of No Significant Impact (FONSI). NASA solicited public and agency review and comment on the environmental impacts of the proposed action through:

1. Publishing a notice of availability of the draft PEA and the draft FONSI in the **Federal Register**, the DeBaca County News, and the Palestine Herald;

2. Making available the draft PEA and draft FONSI at the Palestine Public Library, Palestine, Texas; the Fort Sumner Public Library, Fort Sumner, New Mexico; and the NASA Headquarters Library in Washington, DC;

3. Publication of the draft PEA and draft FONSI on the Internet;

4. Consultations with Federal, State, and local agencies; and

5. Mailing the draft PEA and draft FONSI directly to interested parties.

Comments received were taken into consideration in the final PEA.

CSBF is composed of two facilities that launch scientific balloons. The main facility is located in Palestine, Texas, while the other facility is located in Fort Sumner, New Mexico. Though CSBF Palestine is the main facility, most balloon launches occur from the Fort Sumner facility due to its more remote nature. As balloon flight paths are wind-driven, their landing sites could be in adjacent States. An analysis of the past ten years of flights indicates that the majority of balloons and payloads are recovered from Texas, New Mexico, and Arizona. Very few balloons or payloads have landed in the neighboring States of Oklahoma, Kansas, and Colorado.

The PEA describes the potential impacts from the Proposed Action as well as the No Action alternative. Under the Proposed Action, NASA would increase the number of scientific balloons launched each year. Balloon flights originating from CSBF Fort Sumner would increase from 15 to 25 annually; balloons launched from the CSBF Palestine would continue at approximately 6 per year. No construction would take place at either of the two launch sites and no increase in the personnel staff at either CSBF Fort Sumner or CSBF Palestine is proposed.

Under the No Action alternative, NASA would not increase the number of balloon launches from either CSBF location, and the *status quo* would be maintained with 21 conventional balloons launched annually.

*Summary of Environmental Impacts:* The potential environmental impacts from implementation of the Proposed Action are summarized below.

*Airspace and Balloon Operations:* No adverse impacts to airspace management or balloon operations are anticipated under this proposal. CSBF would continue to adhere to the letter of agreement with the Federal Aviation Administration Air Route Traffic Control Centers (ARTCC) for Albuquerque and Fort Worth. CSBF would continue to notify Cannon Air Force Base prior to balloon launches to further enhance safety in the region. As such, impacts to other users of the airspace or to balloons launched from CSBF Fort Sumner or CSBF Palestine would not be adverse.

*Safety:* NASA and CSBF have extensive safety regulations and standard safety procedures for launch and recovery activities that ensure safety of staff and the general public. Models developed by NASA are used to predict the landing location of the balloon system. Along with real-time computer monitoring systems and controls, population centers and Special Use Land Management Areas (SULMAs) can be avoided, virtually eliminating the potential for injury to people or property. Adverse impacts from implementing the Proposed Action are not anticipated.

*Air Quality:* Vehicular travel by research scientists and students to the CSBF Fort Sumner location would increase under this proposal; however, the emissions would be minimal. Air emissions would not be perceptibly

changed within the CSBF Operations Area due to the small increase in trips to be conducted by recovery vehicles and tracking planes used during the balloon and payload/parachute descent. Overall, no measureable change in air emissions would be anticipated.

*Socioeconomics:* Fort Sumner Village would experience a short-term positive economic impact each year during balloon campaigns at CSBF Fort Sumner from the purchase of food, supplies, and lodging by CSBF staff and research scientists and students. An adequate supply of restaurants and lodging accommodations exists to meet the needs of the CSBF staff and research scientists/students. The City of Palestine currently experiences positive economic impacts from CSBF activities. Under this proposal, balloon launches from Palestine would not increase; therefore, no change in socioeconomic impacts would be anticipated.

*Land Use:* CSBF currently avoids SULMAs and would continue this practice under the Proposed Action. The CSBF Operations Area spans portions of six States; the chances of a balloon/payload landing in the same location are unlikely. Recovery operations are often complete within 24 hours after landing has occurred. Should a balloon/payload land within a SULMA, or on private land, the land manager/landowner would be contacted prior to the CSBF recovery team accessing the site. If required, CSBF would obtain a permit or authorization to retrieve the balloon/payload. Overall, no adverse impact to land use would be expected.

*Biological Resources:* Minor adverse impacts to biological resources are anticipated under the Proposed Action. CSBF would continue to avoid known critical habitats and wetlands. If unplanned circumstances resulted in the need to land a payload within a designated Critical Habitat, CSBF would initiate contact with the U.S. Fish and Wildlife Service to determine the best method for payload recovery, with the least amount of environmental impact.

*Cultural Resources:* Increased balloon operations would constitute an increased probability for adverse effects to cultural resources from balloon/payload landing and recovery activities; however, the probability for impacting culturally significant resources would be extremely low. Predictive modeling used by CSBF for balloon/payload landing would continue to be used for avoidance of all known culturally significant areas. If unplanned circumstances resulted in the need to land a payload within a culturally sensitive area, CSBF would initiate contact with the responsible State or Tribal Historic Preservation Officer to determine the best method for payload recovery, with the least amount of impact.

*Hazardous Materials and Systems:* Strict operational control measures are followed when hazardous materials are used during balloon staging and operations. Should a release of any hazardous material occur during payload landing/recovery operations, CSBF staff would implement NASA-approved procedures for clean up in accordance with applicable Federal and State regulations. Accordingly, impacts to personnel or the environment would not be expected.

*Transportation:* Transportation or traffic issues are minimal in the regions surrounding the CSBF launch sites. Vehicles used in recovery operations would not impact transportation systems across the CSBF Operations Area. As such, no adverse impacts to transportation resources in the region surrounding the CSBF launch sites or within the Operations Area are anticipated.

*Cumulative Effects:* Cumulative impacts were evaluated for potentially affected resources. No cumulative impacts are anticipated from implementation of the Proposed Action. No other known or foreseeable actions would be anticipated to affect resource areas impacted by CSBF balloon launch, flight, termination, or recovery activities.

*Conclusion:* NASA has identified no other issues of potential environmental concern. Based on the findings in the final PEA for the NASA Scientific Balloon Program, and review of underlying reference documents, NASA has determined that the environmental impacts associated with the Proposed Action will not individually or cumulatively have a significant impact on the quality of the human environment. Therefore, an environmental impact statement will not be required.

Dated: December 7, 2010.

**Edward J. Weiler,**

*Associate Administrator, Science Mission Directorate.*

[FR Doc. 2010–31239 Filed 12–10–10; 8:45 am]

**BILLING CODE P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meeting Notice

**TIME AND DATE:** 10 a.m., Thursday, December 16, 2010.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Final Rule—Parts 701, 708a and 708b of NCUA's Rules and Regulations, Mergers and Conversions of Insured Credit Unions, Fiduciary Duties and Indemnification of Directors.
2. Final Rule—Section 701.34 of NCUA's Rules and Regulations, Low-Income Definition.
3. Proposed Rule—Section 701.34 of NCUA's Rules and Regulations, Member Survey Sample Data to Meet Low-Income Designation.
4. Proposed Rule—Part 740 of NCUA's Rules and Regulations, Accuracy of Advertising and Notice of Insured Status.
5. Proposed Rule—Part 745 of NCUA's Rules and Regulations, Share Insurance, Non-interest-bearing Transaction Accounts.
6. Tri-State Federal Credit Union's Appeal of Region II's Denial of its Field of Membership Expansion Request.
7. Central Liquidity Facility Change in Overhead Reimbursement Methodology.
8. Insurance Fund Report.

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, *Telephone:* 703–518–6304.

**Mary Rupp,**

*Board Secretary.*

[FR Doc. 2010–31391 Filed 12–9–10; 4:15 pm]

**BILLING CODE P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that nine meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

*State and Regional/Arts Education (review of State Arts Agency Partnership Agreements):* January 5–6, 2011 in Room 716. This meeting, from 9 a.m. to 10:15 a.m. and from 12:30 p.m. to 6 p.m. on January 5th and from 9 a.m. to 1:30 p.m. on January 6th, will be open.

*Arts Education (application review):* January 6, 2011 in Room 716. This meeting, from 1:30 p.m. to 2 p.m., will be closed.

*Media Arts (application review):* January 11–13, 2011 in Room 730. This

meeting, from 10 a.m. to 5:45 p.m. on January 11th, from 9 a.m. to 6 p.m. on January 12th, and from 9 a.m. to 4 p.m. on January 13th, will be closed.

*Folk & Traditional Arts (review of nominations):* January 11–14, 2011 in Room 716. A portion of this meeting, from 11 a.m. to 12 p.m. on January 14th, will be open to the public for policy discussion. The remainder of the meeting, from 8:30 a.m. to 5:30 p.m. on January 11th, from 9 a.m. to 5:30 p.m. on January 12th—13th, and from 9 a.m. to 11 a.m. on January 14th, will be closed.

*State and Regional (review of State Arts Agency Partnership Agreements):* January 19–20, 2011 in Room 716. This meeting, from 9:30 a.m. to 6 p.m. on January 19th and from 9 a.m. to 4 p.m. on January 20th, will be open.

*State and Regional (review of Regional Partnership Agreements):* January 20, 2011 in Room 716. This meeting, from 4:30 p.m. to 5:30 p.m., will be open.

*State and Regional/Folk and Traditional Arts (review of State Arts Agency Partnership Agreements):* January 21, 2011 in Room 716. This meeting, from 9 a.m. to 5:30 p.m., will be open.

*Music (review of nominations):* January 25, 2011, by teleconference. This meeting, from 3 p.m. to 3:55 p.m., will be closed.

*Music (review of nominations):* January 25, 2011, by teleconference. This meeting, from 4 p.m. to 5 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 8, 2010.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 2010–31156 Filed 12–10–10; 8:45 am]

BILLING CODE 7537–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No.: 70–1257; License No.: SNM–1227; EA–10–041; NRC–2010–0384]**

## AREVA NP, Inc.; Confirmatory Order (Effective Immediately)

### I

AREVA NP, Inc. (AREVA or Licensee) is the holder of Materials License No. SNM–1227 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 70. The license in effect at the time of the incident described below was most recently amended via Amendment 49, issued on July 9, 2007. The NRC renewed Materials License No. SNM–1227, effective April 24, 2009. The license authorizes the operation of the AREVA NP facility in accordance with the conditions specified therein. The facility is located at the AREVA site in Richland, Washington.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on October 5, 2010.

### II

On April 3, 2009, the NRC Office of Investigations (OI) began an investigation (OI Case No. 2–2009–024) at AREVA. Based on the evidence developed during its investigation, OI substantiated that an Advisory Engineer deliberately falsified United Kingdom Department for Transport (DfT) transit approval forms regarding overseas shipments of low enriched uranium. Additionally, OI determined that the Advisory Engineer deliberately failed to follow procedure for release of criticality calculations associated with the shipments. The results of the investigation, completed on December 1, 2009, were sent to AREVA in a letter dated August 10, 2010. The NRC's August 10, 2010 letter offered AREVA the opportunity to resolve the enforcement aspects of this matter through the NRC's normal enforcement process, or through ADR. In response to the NRC's offer, AREVA requested use of the NRC ADR process to resolve the matter.

On October 5, 2010, the NRC and AREVA met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement to resolve any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

### III

During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

1. The NRC and AREVA agreed that the two apparent violations documented in the NRC's letter of August 10, 2010, would be characterized as one violation involving the requirements of 10 CFR 71.5(a), and 49 CFR 172.204(a), associated with the transportation of Class 7 (radioactive) material, on three separate occasions. Specifically, on December 9, 2008, and on March 11 and 18, 2009, a licensee employee deliberately altered (falsified) the date stamp on three documents entitled "Approval to Transit a UK [United Kingdom] Port." Because the DfT transit approvals were falsified, the licensee failed to comply with 49 CFR 172.204(a) which requires the licensee to attest to the fact that the contents of the consignment (shipment) were in all respects in proper condition for transport according to applicable international and national governmental regulations.

2. In response to the violation described above, AREVA implemented numerous corrective actions and enhancements, including but not limited to a prompt investigation into the incidents, performance of a sufficiently independent root cause analysis and corrective action review, an assessment of the actual and potential safety impact of the incidents, a thorough extent of condition review, appropriate notification of regulatory authorities, safety culture and safety conscious work environment initiatives, process changes, and numerous corrective actions and enhancements to preclude recurrence.

3. In response to the violation as described in Section III.1 above, AREVA agreed to the following actions:

a. Within 30 days of the issuance of the Confirmatory Order, AREVA will submit a Reply to a Notice of Violation, which documents its corrective actions

and enhancements as discussed in Section III.2 above. AREVA's Reply to a Notice of Violation will be consistent with the requirements of 10 CFR 2.201.

b. Within 12 months after the issuance of the Confirmatory Order, AREVA will conduct a review to determine the effectiveness of corrective actions and enhancements as described in its Reply to a Notice of Violation. The effectiveness review will also incorporate any commonalities from previous willful issues occurring within AREVA's U.S. Fuel organization within the last three years of the date of issuance of the Confirmatory Order. Upon completion of its effectiveness review, AREVA will develop and implement any additional corrective actions and enhancements, as warranted, to address any additional weaknesses or deficiencies. The results of AREVA's effectiveness review and development of additional corrective actions and enhancements will be communicated to the NRC within 60 days of development of resulting corrective actions.

c. No later than June 30, 2012, AREVA will conduct an independent (i.e., outside the global AREVA organization), safety culture assessment in accordance with an accepted nuclear industry standard. The assessment will include AREVA's Richland, Washington facility, its Erwin, Tennessee facility, and its Lynchburg, Virginia facility. Corrective actions and enhancements, and a schedule for implementation, will be developed in response to the results of the assessment, and provided to the NRC within three months of completion of this effort.

4. The NRC and AREVA agree that the above elements will be incorporated into a Confirmatory Order, and that the violation will be cited as a Notice of Violation, and included as an attachment to the Confirmatory Order. In addition, AREVA agrees to waive its hearing rights for the issues documented in the Confirmatory Order. The resulting Confirmatory Order will be considered by the NRC for any assessment of AREVA, as appropriate.

5. In consideration of the commitments delineated in Section III.3 above, the NRC agrees to refrain from proposing a civil penalty for all matters discussed in the NRC's letter to AREVA of August 10, 2010 (EA–10–041).

6. This agreement is binding upon successors and assigns of AREVA.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that AREVA's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that AREVA's commitments be confirmed by this Order. Based on the above and AREVA's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 51, 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *it is hereby ordered*, effective immediately, that license no. SNM–1227 *is modified* as follows:

1. Within 30 days of the issuance of the Confirmatory Order, AREVA will submit a Reply to a Notice of Violation, which documents its corrective actions and enhancements as discussed in Section III.2 above. AREVA's Reply to a Notice of Violation will be consistent with the requirements of 10 CFR 2.201.

2. Within 12 months after the issuance of the Confirmatory Order, AREVA will conduct a review to determine the effectiveness of corrective actions and enhancements as described in its Reply to a Notice of Violation. The effectiveness review will also incorporate any commonalities from previous willful issues occurring within AREVA's U.S. Fuel organization within the last three years of the date of issuance of the Confirmatory Order. Upon completion of its effectiveness review, AREVA will develop and implement any additional corrective actions and enhancements, as warranted, to address any additional weaknesses or deficiencies. The results of AREVA's effectiveness review, and development of additional corrective actions and enhancements, will be communicated to the NRC within 60 days of development of resulting corrective actions.

3. No later than June 30, 2012, AREVA will conduct an independent (*i.e.*, outside the global AREVA organization), safety culture assessment in accordance with an accepted nuclear industry standard. The assessment will include AREVA's Richland, Washington facility, its Erwin, Tennessee facility, and its Lynchburg, Virginia facility. Corrective actions and enhancements, and a schedule for implementation, will be developed in response to the results of the assessment, and provided to the NRC within three months of completion of this effort.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by AREVA of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than AREVA, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on

NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than AREVA) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 2nd day of December 2010.

**Luis A. Reyes,**

*Regional Administrator.*

[FR Doc. 2010–31175 Filed 12–10–10; 8:45 am]

BILLING CODE P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–366; NRC–2010–0345]**

## Southern Nuclear Operating Company, Inc.

Edwin I Hatch Nuclear Plant, Unit No. 2; Exemption

### 1.0 Background

The Southern Nuclear Operating Company, Inc. (SNC, the licensee) is the holder of the Renewed Facility Operating License No. NPF–5 which authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 (HNP–2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Appling County in Georgia.

**2.0 Request/Action**

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.12, "Specific Exemptions", SNC has, by letter dated May 12, 2010 (the application), requested an exemption from the fuel cladding material requirements in 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems [ECCS] for Light-Water Nuclear Power Reactors", and Appendix K to 10 CFR 50, "ECCS Evaluation Models," (Appendix K). The regulation in 10 CFR 50.46 contains acceptance criteria for ECCS for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46 and Appendix K is needed to irradiate a lead test assembly (LTA) comprised of different cladding alloys at HNP–2.

**3.0 Discussion**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2) of 10 CFR, special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

*Authorized by Law*

This exemption would allow the licensee to insert four (Global Nuclear Fuel (GNF)) GNF2 lead test fuel assemblies manufactured with a cladding material called GNF-Ziron, which is outside of the cladding materials specified in the regulations (*i.e.*, zircaloy or ZIRLO™) into the core of HNP–2, during fuel cycles 22, 23 and 24. This exemption is similar to a previous exemption regarding the use of GE14 LTAs with a limited number of fuel rods clad in GNF-Ziron at HNP–2 that was issued on November 7, 2008. The differences are that if GNF2 fuel is being used, all rods will be clad in GNF-Ziron, and evaluations of the LTAs will be performed using the PRIME code methodology. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

*No Undue Risk to Public Health and Safety*

In regard to the fuel mechanical design, the exemption request relates solely to the specific types of cladding material specified in the regulations. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. In Section V of the application, SNC provides a technical basis supporting the continued applicability of the 10 CFR 50.46, Paragraph (b), fuel criteria to GNF-Ziron. Quench tests under a restrained load have been conducted on GNF-Ziron samples oxidized to various levels at elevated loss-of-coolant accident (LOCA) temperatures. While these tests differ from the post-steam oxidized ring-compression testing (which forms the basis of the 10 CFR 50.46 post-quench ductility criteria), these results provide reasonable assurance that the 17 percent oxidation and 2200 degree Fahrenheit criteria are valid for GNF-Ziron and meet the underlying purpose of the rule, which is to maintain a degree of post-quench ductility in the fuel cladding material.

Based on an ongoing LOCA research program at Argonne National Laboratory as discussed in NRC Research Information Letter 0801, "Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46," (Agencywide Documents Access and Management Systems (ADAMS) Accession No. ML081350225), cladding corrosion (and associated hydrogen pickup) has a significant impact on post-quench ductility. Post-irradiation examinations provided by the licensee in Enclosure 6 of its application demonstrate the favorable hydrogen pickup characteristics of GNF-Ziron as compared with standard Zircaloy-2. Hence, the GNF-Ziron fuel rods would be less susceptible to the detrimental effects of hydrogen uptake during normal operation and their impact on post-quench ductility.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LTA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by GNF on GNF-Ziron (Figure B–15 of Enclosure 5) of the application demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, application of Appendix K, Paragraph I.A.5, is not necessary for the licensee to achieve its underlying purpose in these circumstances.

High temperature burst test results are provided in Figure B–6 (Enclosure 5 of Reference 1). These test results illustrate similar burst characteristics of GNF-Ziron as compared with standard Zry-2. In addition, Enclosure 6 of Reference 1 provides further comparisons of material properties between GNF-Ziron and Zry-2. Based upon this comparison of material properties, GNF and SNC believe that currently approved methods and models are directly applicable to GNF-Ziron. Based upon the material properties provided in References 1 and 2, the NRC staff finds the use of current LOCA models and methods acceptable for the purpose of evaluating LTAs containing GNF-Ziron fuel rods.

In support of its exemption request, SNC submitted a GNF document entitled, "GNF-Ziron Performance Benefits and Licensing Requirements Assessment" (Enclosure 6 of the application). This report provides a logical assessment of the potential impact of differences in material properties on the PRIME fuel thermal-mechanical methodology. While not directly related to the 10 CFR 50.46 exemption request, the NRC staff finds the conclusion of this report acceptable for the purpose of evaluating LTAs containing GNF-Ziron fuel rods. Further NRC staff review may be necessary prior to use of PRIME for batch application of GNF-Ziron fuel cladding material.

Through mechanical testing and a comparison of material properties, SNC has provided reasonable assurance that anticipated in-reactor performance will be acceptable. Further, the licensee has demonstrated that the use of current methods and models are reasonable for evaluating the cladding's performance to anticipated operational occurrences and accidents. Nevertheless, as with any developmental cladding alloy, the NRC staff requires a limitation on the total number of fuel rods clad in a developmental alloy in order to ensure a minimal impact on the simulated progression and calculated

consequences of postulated accidents. This limitation is directly related to the available material properties (both unirradiated and irradiated) used to judge the cladding alloy's anticipated in-reactor performance.

Based upon results of metal-water reaction tests and mechanical testing which ensure the applicability of ECCS models and acceptance criteria, the limited number and anticipated performance of the advanced cladding fuel rods, and the use of approved LOCA models to ensure that the LTAs satisfy 10 CFR 50.46 acceptance criteria, the NRC staff finds it acceptable to grant an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the use of four GNF2 LTAs within HNP–2.

*Consistent with Common Defense and Security*

The proposed exemption would allow the licensee to insert four lead test fuel assemblies with fuel rod cladding that does not meet the definition of Zircaloy or ZIRLO™ as specified by 10 CFR 50.46, and Appendix K, into the core of HNP–2, during fuel cycles 22, 23 and 24. This change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

*Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12, are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for emergency core cooling system performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to these advanced cladding alloys, even though the evaluations discussed above show that the intent of the regulations is met. Therefore, since the underlying purpose of 10 CFR 50.46 and Appendix K is achieved with the use of these advanced cladding alloys, the special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50.46 and Appendix K exist.

**4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC exemptions from the requirements of 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow the limited use of four LTAs with GNF-Ziron cladding during fuel cycles 22, 23 and 24 for the HNP–2 plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 69137; November 10, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 3rd day of December 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–31173 Filed 12–10–10; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Partially Closed Meeting of the President's Council of Advisors on Science and Technology

**AGENCY:** President's Council of Advisors on Science and Technology, Office of Science and Technology Policy.

**ACTION:** Public notice.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

**DATES:** January 7, 2011.

**ADDRESSES:** The meeting will be held at the Marriott Metro Center, 775 12th Street, NW., Room Junior Ballrooms 2–3, Washington, DC.

*Type of Meeting:* Open and Closed.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 7, 2011 from 10 a.m. to 5 p.m. with a lunch break from 12:15 p.m. to 1:30 p.m.

*Open Portion of Meeting:* During this open meeting, PCAST is tentatively scheduled to hear presentations on agriculture research and development, the National Science Foundation, synthetic biology, national security, and international affairs. PCAST members will also discuss reports they are developing on the topics of advanced manufacturing and biodiversity preservation and ecosystem sustainability. Additional information and the agenda will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

*Closed Portion of the Meeting:* PCAST may hold a closed meeting of approximately 1 hour with the President on January 7, 2011, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1). The precise date and time of this potential meeting has not yet been determined.

*Public Comments:* It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 7, 2011 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

*Oral Comments:* To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12 p.m. Eastern Time on Wednesday, December 22, 2010. Phone or e-mail reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

*Written Comments:* Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST at least two weeks prior to each meeting date, December 22, 2010, so that the comments may be made available to the

PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

**FOR FURTHER INFORMATION CONTACT:** Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast*. A live video webcast and an archive of the webcast after the event is expected to be available at *http://whitehouse.gov/ostp/pcast*. The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov*, (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers who directly advise the President. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast*. PCAST makes policy recommendations in the many areas where understanding of science, technology, and innovation is key to strengthening our economy and forming policy that works for the American people. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of MIT and Harvard.

*Meeting Accommodations:* Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

**Ted Wackler,**

*Deputy Chief of Staff.*

[FR Doc. 2010–31229 Filed 12–10–10; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 16, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 16, 2010 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Regulatory matters regarding financial institutions; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: December 9, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–31393 Filed 12–9–10; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on December 15, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

**ITEM 1:** The Commission will consider whether to propose rule 3Cg-1 under the Exchange Act governing the exception to mandatory clearing of security-based swaps under Section 763(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which is available to counterparties meeting certain conditions. The Commission will also consider related matters, including the exemption for banks, savings associations, farm credit system institutions and credit unions contemplated by Section 763(a).

**ITEM 2:** The Commission will consider whether to propose rule and form amendments to establish a process for the submission for review of security-based swaps for mandatory clearing under Section 763(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and for the filing of changes to rules, procedures or operations in accordance with Section 806(e) of Dodd-Frank Wall Street Reform and Consumer Protection Act by clearing agencies that are designated financial market utilities. The Commission also will consider whether to propose a new rule to establish a procedure by which the Commission may stay the mandatory clearing requirement. In addition, the Commission will consider whether to propose a new rule concerning the submission to a clearing agency of a security-based swap for clearing.

**ITEM 3:** The Commission will consider whether to propose rules regarding disclosure and reporting obligations with respect to the use of conflict minerals to implement the requirements of Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**ITEM 4:** The Commission will consider whether to propose rules regarding disclosure and reporting obligations with respect to mine safety matters to implement the requirements of Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**ITEM 5:** The Commission will consider whether to propose rules regarding disclosure and reporting obligations with respect to payments to governments made by resource extraction issuers to implement the requirements of Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been

added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 8, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–31291 Filed 12–9–10; 11:15 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63447; File No. SR–NYSEArca–2010–107]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing Relating to Listing and Trading of AdvisorShares Active Bear ETF Under NYSE Arca Equities Rule 8.600

December 7, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 23, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): AdvisorShares Active Bear ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares [4] ("Shares") under NYSE Arca Equities Rule 8.600: AdvisorShares Active Bear ETF (the "Fund").[5] The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The investment advisor to the Fund is AdvisorShares Investments, LLC (the "Advisor"). Ranger Alternative Management, L.P. ("Ranger") is the sub-advisor ("Sub-Advisor") to the Fund and the portfolio manager. Foreside Fund Services LLC ("Distributor") is the distributor for the Fund. The Bank of New York Mellon Corporation ("Administrator") is the administrator, custodian, transfer agent and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.[8] In the event the Advisor or Sub-

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of AdvisorShares Dent Tactical ETF); 61842 (April 5, 2010–10), 75 FR 18554 (April 12, 2010) (SR–NYSEArca–2010–10) (order approving listing of Mars Hill Global Relative Value ETF).

[6] The Trust is registered under the 1940 Act. On September 22, 2010, the Trust filed with the Commission Post-Effective Amendment No. 12 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (the "Registration Statement"). The Trust has also filed an Amended Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13677 dated May 28, 2010) ("Exemptive Application"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-adviser are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[8] With respect to the Fund, the Exchange represents that the Advisor, as the investment advisor of the Fund, as well as the Sub-Advisor to the Fund and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review

Continued

Advisor become affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

According to the Registration Statement, the Fund's investment objective is to seek capital appreciation through short sales of domestically traded equity securities. The Sub-Advisor seeks to achieve the Fund's investment objective by short selling a portfolio of liquid mid- and large-cap U.S. exchange-traded equity securities, exchange-traded funds ("ETFs") registered pursuant to the 1940 Act, exchange-traded notes ("ETNs"), and exchange-traded products ("ETPs").[9] In contrast to ETFs, ETNs and ETPs are not registered pursuant to the 1940 Act.

Operation of the Fund

According to the Registration Statement, the Sub-Advisor will utilize a disciplined, consistent investment approach to both security selection and risk management and will implement a bottom-up, fundamental, research driven security selection process. In addition to extensive quantitative analysis, careful consideration is given to qualitative analysis. The assessment of the management team, accounting practices, corporate governance and the company's competitive advantage are all key items. Once these quantitative and qualitative characteristics are thoroughly analyzed, the Sub-Advisor then determines if there is sufficient return to the stock price to warrant an investment. Once a position is included in the Fund's portfolio, it is subject to regular fundamental and technical risk management review.

According to the Registration Statement, in selecting short positions, the Sub-Advisor seeks to identify securities with market capitalizations typically of $1 billion and above, and with low earnings quality or aggressive accounting. Key factors include, but are not limited to: Quality and sustainability of revenue, as indicated by extended payment terms, changes in revenue policies or other factors; deterioration of cash flows or declining quality of earnings; reserve reversals or an increase in "soft" assets which could indicate the capitalization of expenses; and an analysis of irregular items affecting operating or gross margins including inventory, payables and taxes. The Sub-Advisor will also seek out the following qualitative factors: Poor corporate governance or significant related party transactions; heavy insider selling; and unique competitive challenges.

According to the Registration Statement, once it is determined that a company possesses the proper characteristics, it must then be determined whether to include that position in the Fund's portfolio. During this analysis, the Sub-Advisor considers specific factors described in the Registration Statement, including assessment on individual merits, valuation metrics and technical factors.

The Fund generally targets composition of 20 to 50 equity short positions, with an average individual position size which generally ranges between 2–7% of the aggregate portfolio exposure. Typically, short positions will be initiated at the lower end of the position size range in order to gain exposure to a particular stock.

ETFs registered pursuant to the 1940 Act or other exchange-traded products not registered pursuant to the 1940 Act will also be utilized to manage exposure to broad indexes or certain sectors. Exchange traded products positions will typically range between 10–15% of the Fund's portfolio. Exchange-traded products may be used to gain exposure in instances when the Sub-Advisor has a more bearish posture with respect to the broad market.

The Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.*, delivery and payment can take place between a month and 120 days after the date of the transaction). The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds.[10]

To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality short-term debt securities and money market instruments. The Fund may be invested in these instruments for extended periods, depending on the Sub-Advisor's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements and bonds that are BBB or higher.

Creations and Redemptions.

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as "Creation Units." According to the Registration Statement, the Shares of the Fund are "created" at their net asset value ("NAV") by market makers, large investors and institutions only in block-size Creation Units of 25,000 shares or more. A "creator" enters into an authorized participant agreement (a "Participant Agreement") with the Distributor or a DTC participant that has executed a Participant Agreement with the Distributor (an "Authorized Participant"), and deposits into the Fund a specified amount of cash totaling the NAV of the Creation Unit(s), in exchange for 25,000 shares of the Fund (or multiples thereof). Similarly, Shares can only be redeemed in Creation Units, generally 25,000 shares or more, for a specified amount of cash totaling the NAV of the Creation Unit(s). Shares are not redeemable from the Fund except when aggregated in Creation Units. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in a form prescribed in the Participant Agreement.

According to the Registration Statement, unlike many other ETFs, Creation Units of the Fund are sold only for cash. Creation Units are sold at the NAV next computed, plus a fixed creation transaction fee, assessed per transaction. In all cases, such fees will be limited in accordance with SEC requirements applicable to management investment companies offering redeemable securities.

All orders to create must be received by the Distributor no later than the close of the Core Trading Session on NYSE Arca (ordinarily 4 p.m. Eastern Time

regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The Fund may sell short only equity securities traded in the U.S. on registered exchanges. The Fund will not purchase or borrow illiquid securities or securities registered pursuant to Rule 144A under the Securities Act of 1933.

[10] As stated in the Registration Statement, the Fund may not, with respect to 75% of its total assets, (i) purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. In addition, the Fund may not purchase any securities which would cause 25% or more of its total assets to be invested in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries, provided that this limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.

("E.T."); on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. Orders to redeem must be received by the Administrator no later than 4 p.m. E.T.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [11] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Net Asset Value

According to the Registration Statement, the NAV per Share of the Fund is computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration and distribution fees, are accrued daily and taken into account for purposes of determining NAV. The NAV per Share for the Fund is calculated by the Administrator and determined as of the close of the regular trading session on NYSE Arca (ordinarily 4 p.m., Eastern Time) on each day that the Exchange is open.

In computing the Fund's NAV, the Fund's securities positions are valued based on their last readily available market price. Price information on listed securities is taken from the exchange where the security is primarily traded. Securities regularly traded in an over-the-counter market are valued at the latest quoted sales price. Securities not listed on an exchange or national securities market, or securities in which there was no last reported sales price, are valued at the most recent bid price. Other portfolio securities and assets for which market quotations are not readily available are valued based on fair value as determined in good faith by the Sub-Advisor in accordance with procedures adopted by the Fund's Board of Trustees.

[11] 17 CFR 240.10A–3.

Availability of Information

The Fund's Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[12] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[13]

On a daily basis, for each portfolio security position of the Fund, the Fund will disclose on its Web site the following information: ticker symbol, name of security, positions [14] held long or short in the portfolio, and percentage weighting of the security in the portfolio. The Web site information will be publicly available at no charge.

In addition, a portfolio composition file which includes the cash amount required to be delivered in exchange for each Fund share, will be publicly disseminated daily prior to the opening of the New York Stock Exchange ("NYSE") via the National Securities Clearing Corporation. The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

[12] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[13] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[14] *See* e-mail from Tim Malinowski, Senior Director, NYSE Euronext, Global Index and Exchange Traded Funds, to Christopher Chow and Kristie Diemer, Special Counsels, Division of Trading and Markets, Commission, dated November 24, 2010.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[15] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets

[15] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG.[16]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. E.T. each trading day.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–107 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–NYSEARCA–2010–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[16] For a list of the current members of ISG, *see http://www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–107 and should be submitted on or before January 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–31132 Filed 12–10–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63454; File No. SR–NYSEAmex–2010–111]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operative Date of NYSE Amex Equities Rule 92(c)(3) From December 31, 2010 to August 1, 2011

December 7, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 29, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of NYSE Amex Equities Rule 92(c)(3) from December 31, 2010 to August 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov*, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to extend the delayed operative date of Rule 92(c)(3) from December 31, 2010 to August 1, 2011. The Exchange believes that this extension will provide the time necessary for the Exchange, the New York Stock Exchange LLC ("NYSE"), and the Financial Industry Regulatory Authority, Inc. ("FINRA") to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.[4]

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the NYSE.[5] These amendments were filed in part to begin the harmonization process between NYSE Rule 92 and FINRA's Manning Rule.[6] In connection with those amendments, the NYSE implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits NYSE member organizations to submit riskless principal orders to the NYSE, but requires them to submit to a designated NYSE database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the NYSE informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the NYSE's Front End Systemic Capture ("FESC") database linking the execution of the riskless principal order on the NYSE to the specific underlying orders. The information provided must be sufficient for both member firms and the NYSE to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the NYSE and member organizations to make certain changes to their trading and order management systems, the NYSE filed to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[7] The NYSE filed for additional extensions of the operative date of Rule 92(c)(3) to December 31, 2010.[8] Because NYSE Amex adopted NYSE Rule 92 in its then current form,[9] the delayed operative date for the NYSE Rule 92(c)(3) reporting requirements also applied for NYSE Amex Equities Rule 92(c)(3) reporting requirements

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE has filed a companion rule filing to conform its Rules to the changes proposed in this filing. *See* SR–NYSE–2010–76, formally submitted November 29, 2010.

[5] *See* Securities Exchange Act Release No 56017 (Jul. 5, 2007), 72 FR 38110 (Jul. 12, 2007) (SR–NYSE–2007–21).

[6] *See* NASD Rule 2111 and IM–2110–2.

[7] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114).

[8] *See* Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29); 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR–NYSE–2009–30); 60396 (July 30, 2009), 74 FR 39126 (Aug. 5, 2009) (SR–NYSE–2009–73); 61251 (Dec. 29, 2009), 75 FR 482 (Jan. 5, 2010) (SR–NYSE–2009–129); and 62541 (July 21, 2010), 75 FR 44042 (July 27, 2010) (SR–NYSE–2010–52).

[9] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE. *See* Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex–2008–63); 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR–NYSE–2008–106); 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR–NYSEALTR–2008–11).

and the Exchange filed for additional extensions of the operative date, the most recent of which was an extension to December 31, 2010.[10]

Request for Extension

FINRA, NYSE, and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange, NYSE, and FINRA will not have harmonized their respective customer order protection rules by the current December 31, 2010 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with NYSE and FINRA to pursue efforts to harmonize customer order protection rules. On December 10, 2009, FINRA filed with the Commission its rule proposal to adopt a new industry standard for customer order protection as proposed FINRA Rule 5320.[11] That proposed filing is based on the draft rule text that FINRA and NYSE Regulation each circulated to their respective member participants and includes copies of the comment letters that FINRA and NYSE Regulation received on the rule proposal. The Exchange intends to adopt a new customer order protection rule that is substantially identical to proposed FINRA Rule 5320.

FINRA has filed to extend the time for Commission action on its rule filing to adopt proposed FINRA Rule 5320 to December 3, 2010. As proposed by FINRA, however, its proposed new rule will not be effective upon approval. Rather, the rule filing will become effective at a later date, not yet known, in order to provide time for FINRA, NYSE, and market participants to implement programming changes associated with the proposed new rule.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[12] Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange, NYSE, and FINRA the time necessary to obtain Commission approval for and implement a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to delay the operative date for NYSE Amex Equities Rule 92(c)(3) from December 31, 2010 to August 1, 2011.

Pending the harmonization of the three rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the Rule 92(c)(3) reporting requirements are suspended until August 1, 2011 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with NYSE and FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension provides the Exchange, NYSE, and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

---

[10] *See* Securities Exchange Act Release Nos. 59620 (Mar. 23, 2009), 74 FR 14176 (Mar. 30, 2009) (SR–NYSEALTR–2009–29); 60397 (July 30, 2009), 74 FR 39128 (Aug. 5, 2009) (SR–NYSEAmex–2009–48); 61250 (Dec. 29, 2009), 75 FR 477 (Jan. 5, 2010) (SR–NYSEAmex–2009–92); and 62540 (July 21, 2010), 75 FR 44040 (July 27, 2010) (SR–NYSEAmex–2010–70).

[11] *See* Securities Exchange Act Release No. 61168 (Dec. 15, 2009), 74 FR 68084 (Dec. 22, 2009) (SR–FINRA–2009–90).

[12] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–111 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–111 and should be submitted on or before January 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–31199 Filed 12–10–10; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63455; File No. SR–NYSE–2010–76]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operative Date of NYSE Rule 92(c)(3) From December 31, 2010 to August 1, 2011

December 7, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 29, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of NYSE Rule 92(c)(3) from December 31, 2010 to August 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov* and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to extend the delayed operative date of NYSE Rule 92(c)(3) from December 31, 2010 to August 1, 2011. The Exchange believes that this extension will provide the time necessary for the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.[4] These amendments were filed in part to begin the harmonization process between Rule 92 and FINRA's Manning Rule.[5] In connection with those amendments, the Exchange implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the Exchange's Front End Systemic Capture ("FESC") database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the Exchange and member organizations to make certain changes to their trading and order management systems, the NYSE filed to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3)

[4] *See* Securities Exchange Act Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR–NYSE–2007–21).

[5] *See* NASD Rule 2111 and IM–2110–2.

requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[6] The Exchange filed for additional extensions of the operative date of Rule 92(c)(3), the most recent of which was an extension to December 31, 2010.[7]

Request for Extension[8]

FINRA and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange and FINRA will not have harmonized their respective customer order protection rules by the current December 31, 2010 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with FINRA to pursue efforts to harmonize customer order protection rules. On December 10, 2009, FINRA filed with the Commission its rule proposal to adopt a new industry standard for customer order protection as proposed FINRA Rule 5320.[9] That proposed filing is based on the draft rule text that FINRA and NYSE Regulation each circulated to their respective member participants and includes copies of the comment letters that FINRA and NYSE Regulation received on the rule proposal. The Exchange intends to adopt a new customer order protection rule that is substantially identical to proposed FINRA Rule 5320.

FINRA has filed to extend the time for Commission action on its rule filing to adopt proposed FINRA Rule 5320 to December 3, 2010. As proposed by FINRA, however, its proposed new rule will not be effective upon approval. Rather, the rule filing will become effective at a later date, not yet known, in order to provide time for FINRA, NYSE, and market participants to implement programming changes associated with the proposed new rule.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[10] Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange and FINRA the time necessary to obtain Commission approval for and implement a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to delay the operative date for NYSE Rule 92(c)(3) from December 31, 2010 to August 1, 2011.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the Rule 92(c)(3) reporting requirements are suspended until August 1, 2011 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension provides the Exchange and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114).

[7] *See* Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29); 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR–NYSE–2009–30); 60396 (July 30, 2009), 74 FR 39126 (Aug. 5, 2009) (SR–NYSE–2009–73); 61251 (Dec. 29, 2009), 75 FR 482 (Jan. 5, 2010) (SR–NYSE–2009–129); and 62541 (July 21, 2010), 75 FR 44042 (July 27, 2010) (SR–NYSE–2010–52).

[8] NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. *See* SR–NYSEAmex–2009–111, formally submitted November 29, 2010.

[9] *See* Securities Exchange Act Release No. 61168 (Dec. 15, 2009), 74 FR 68084 (Dec. 22, 2009) (SR–FINRA–2009–90).

[10] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–76 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–76 and should be submitted on or before January 3, 2011

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–31200 Filed 12–10–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63462; File No. SR–NYSEArca–2010–106]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Amending Its Rules Regarding the Listing of Option Series With $1 Strike Prices

December 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 24, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the listing of $1 strike prices. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov* and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 6.4 Commentary .04 to improve the operation of the $1 Strike Price Program.

Currently, the $1 Strike Price Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, the Exchange was not able to add $32, $33, $34, $36, $37 or $38 strikes during the day.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price.

On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Price Program may currently have $2.50 interval strike prices added that are more than $5 from the underlying price or are more than a nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, the Exchange may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, the Exchange would not be able to list a $12 or $13 strike. If the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange proposes to prohibit $2.50 interval strikes below $50 in all $1 Strike Price Program issues, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, the Exchange proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") Provisions in Rule 6.4A.[3] For instance, if the underlying security was trading at $19, the Exchange could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, the Exchange may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long-term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from these changes to the $1 Strike Price Program.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Price Program by providing a consistent application of strike price intervals for issues in the $1 Strike Price Program.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–106 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–NYSEArca–2010–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–106 and should be submitted on or before January 3, 2011.

[3] Rule 6.4A codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, the Exchange shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–31224 Filed 12–10–10; 8:45 am]

BILLING CODE 8011–01–P

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Northern District of Texas, Fort Worth Division, dated October 22, 2007, the United States Small Business Administration hereby revokes the license of SBIC Partners II, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 06/76–0316 issued to SBIC Partners II, L.P. on June 16, 1998 and said license is hereby declared null and void as of July 28, 2010.

U.S. Small Business Administration.

**Sean J. Greene,**

*Associate Administrator for Investment.*

[FR Doc. 2010–31153 Filed 12–10–10; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/72–0616 issued to RockMaple Ventures, L.P., and said license is hereby declared null and void as of August 4, 2010.

U.S. Small Business Administration.

**Sean J. Greene,**

*AA/Investment.*

[FR Doc. 2010–31152 Filed 12–10–10; 8:45 am]

BILLING CODE 8025–01–P

[6] 17 CFR 200.30–3(a)(12).

## TENNESSEE VALLEY AUTHORITY

### Douglas and Nolichucky Tributary Reservoirs Land Management Plan, in Cocke, Greene, Hamblen, Jefferson, and Sevier Counties, TN

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Issuance of Record of Decision (ROD).

**SUMMARY:** This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA has prepared the Douglas and Nolichucky Tributary Reservoirs Land Management Plan for the 3,191 acres of TVA-managed public land on these reservoirs in northeastern Tennessee. On November 4, 2010, the TVA Board of Directors (TVA Board) approved the plan, implementing the Preferred Alternative (Alternative C, Modified Land Use Alternative) identified in the final environmental impact statement (FEIS). Under the plan adopted by the TVA Board, TVA-managed public land on Douglas and Nolichucky tributary reservoirs has been allocated into broad use categories or "zones," including Project Operations (Zone 2), Sensitive Resource Management (Zone 3), Natural Resource Conservation (Zone 4), Industrial (Zone 5), Developed Recreation (Zone 6), and Shoreline Access (Zone 7). Allocations were made in a manner consistent with TVA's 2006 Land Policy.

**FOR FURTHER INFORMATION CONTACT:** Amy Henry, NEPA Specialist, Environmental Permits and Compliance, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902–1499; telephone (865) 632–4045 or e-mail *abhenry@tva.gov.*

**SUPPLEMENTARY INFORMATION:** TVA manages public lands to protect the integrated operation of TVA reservoir and power systems, to provide for appropriate public use and enjoyment of the reservoir system, and to provide for continuing economic growth in the Tennessee Valley.

Douglas and Nolichucky tributary reservoirs are located in northeastern Tennessee. The reservoirs are along the Nolichucky and French Broad rivers, which flow west from North Carolina to the Tennessee River. Existing uses around the reservoirs on public and private land include TVA project operations, developed and dispersed recreation, private residences, and undeveloped areas. A total of 597 miles of shoreline surrounds these reservoirs, but the portion of shoreline owned and managed by TVA differs greatly between them, with 19 of 36 miles of Nolichucky Reservoir shoreline being managed by TVA while only 69 of the 561 miles of Douglas Reservoir shoreline are managed by TVA.

TVA originally acquired nearly 3,760 acres of land on the two reservoirs. About 15 percent of that land has been transferred to State and other Federal agencies for public recreation or natural resource conservation use. TVA presently manages approximately 3,191 acres along these reservoirs. Reservoir properties on Douglas Reservoir previously were planned in 1965 utilizing a Forecast System. Nolichucky Reservoir has never been planned.

The plan is designed to guide future decision-making and the management of these reservoir properties in a manner consistent with the 2006 TVA Land Policy and other relevant TVA policies.

**Public Involvement**

TVA published a notice of intent to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on May 30, 2008. Between May 30 and July 15, 2008, TVA sought input from individuals, various State and Federal agencies, elected officials, and local organizations. Thirty participants attended a public scoping meeting held on June 12, 2008, in Morristown, Tennessee. TVA received over 100 scoping comments, the majority of which concerned management of natural and recreation resources, reservoir water levels, and land ownership issues on the Nolichucky Reservoir. TVA used these comments to develop three alternatives for assessment in the EIS: Alternative A—No Action Alternative; Alternative B—Proposed Land Use Alternative; and Alternative C—Modified Land Use Alternative.

The notice of availability (NOA) of the Draft EIS (DEIS) was published in the **Federal Register** on March 12, 2010. TVA accepted comments on the DEIS until April 26, 2010. Approximately 40 people attended a public meeting on April 6, 2010, in Newport, Tennessee. TVA received a total of 38 comments from individuals; interested organizations; and Federal, State, and local government agencies.

The majority of the public responses focused on land use allocation for specific parcels of TVA-managed land, in particular on the Nolichucky Reservoir. There were also comments about the NEPA process and alternative selection, stewardship of public lands, recreation on public lands including the safety of hunters and adjacent

landowners, land use, and ownership. The remainder of public comments identified environmental issues such as water quality and litter, including recommendations to change the allocation of TVA land to more protective management zones.

Comments from Federal and State agencies were largely informational and included reminders of existing agreements. The Tennessee Historical Commission (THC) found that the current programmatic agreement between TVA and THC satisfied TVA's responsibilities under Section 106 of the National Historic Preservation Act. The U.S. Environmental Protection Agency (USEPA) expressed that its primary concern was the uncertainty of whether allocated lands could be reallocated by TVA to management zones with a greater potential for adverse impacts during site-specific reviews or public requests to the TVA Board. The Department of the Interior recommended that it be contacted during future site-specific reviews to evaluate the potential for future proposed projects to impact endangered and threatened species.

TVA reviewed and prepared responses to all of these comments. In some cases, the FEIS was revised to reflect the information or issues presented. After considering all of the comments, the FEIS was completed and distributed to commenting agencies and the public. In the FEIS, TVA identified Alternative C as the Preferred Alternative. The NOA of the FEIS was published in the **Federal Register** on September 3, 2010, when the FEIS was distributed.

**Alternatives Considered**

TVA considered three alternatives for managing 102 parcels of public land, comprising approximately 3,191 acres, under its management around the reservoirs. Under all alternatives, TVA would continue to conduct an environmental review to address site- and project-specific issues prior to the approval of any proposed development or activity on a land parcel. Future activities and land uses would be guided by the TVA Land Policy. About 87 percent of the reservoir lands (2,783 acres) had previous commitments specified in land use agreements (*e.g.*, license, easement, contract) or existing plans. No changes to these committed lands are proposed under any alternative. TVA land use allocations are not intended to supersede deeded landrights or land ownership.

*No Action (Alternative A):* TVA would not implement a new plan and would continue using the existing Forecast System developed in 1965 for Douglas Reservoir. Nolichucky Reservoir would remain unplanned. The reservoir lands would be managed according to TVA policies and existing land use agreements. Reservoir lands would not be allocated according to TVA's current land use planning zones and, as a result, would not be in complete alignment with current TVA policies.

*Proposed Land Use (Alternative B) and Modified Land Use (Alternative C):* Under both Action Alternatives, TVA would implement an updated reservoir land management plan using its current land use planning zones. TVA-managed lands would be allocated to one of these zones according to current land use, existing data, and newly collected data. Under Alternative C, allocations would be based upon public comments and other information obtained during the scoping process, in addition to information considered under Alternative B.

Under Alternatives B and C, because of the large amount of committed land and common projected future land use, the proportion of lands allocated to each zone is similar. About half of the land would be allocated to Natural Resource Conservation (Zone 4) or Sensitive Resource Management (Zone 3). About one-third would be allocated to Project Operations (Zone 2), and the remainder would be allocated to Developed Recreation (Zone 6), Shoreline Access (Zone 7), or Industrial (Zone 5) uses. Compared to Alternative B, zone allocations under Alternative C differ on 16 of the 102 parcels. These 16 parcels total about 149 acres. Alternative C includes slightly less land in Zone 6 and slightly more land in Zones 3 and 4. Under Alternative C, parcels on Douglas and Nolichucky reservoirs that contain rare plants and plant communities, cultural resources, and high-quality wetlands would be allocated to Zone 3, which allows the least opportunity for development and is, therefore, the most protective of sensitive resources. Those parcels would be allocated to Zone 4 or Zone 6 under Alternative B. Therefore, under the assumption that development would be more likely to occur in Zone 6 than in Zones 3 and 4, Alternative C would result in slightly fewer opportunities for development than Alternative B.

In the FEIS, TVA considered the environmental consequences of the alternatives on a wide variety of environmental resources. No significant direct, indirect, or cumulative impacts are expected to occur to any resource under any of the alternatives. Under any alternative, potential impacts to sensitive resources, such as federally listed as endangered and federally listed as threatened species, cultural resources, and wetlands would be identified during project-specific evaluations.

**Comments on the FEIS**

TVA received comments on the FEIS from the USEPA; in addition, several individuals asked for minor clarification of the FEIS content but offered no comments. USEPA expressed preference for Alternative C, as it allocates more land to the most protective zones of management and agreed with TVA that Alternative C was the Environmentally Preferred Alternative. USEPA said that although it respects TVA's wishes to remain flexible in its land allocations, it believes that the plan would be more meaningful if it was more than guidance and was principally not changed during its term. USEPA's primary concern continues to be the uncertainty that lands could be reallocated to zones with less environmental protection after site-specific reviews or public requests. USEPA recommended that the TVA Board not grant reallocations of lands to less protective management zones after the issuance of a ROD and said it would not concur with reallocation to management zones with increased potential for development impacts, but would agree with reallocations to management zones of greater protection.

In response to USEPA's comments, with the approval of Alternative C by the TVA Board, all future uses of TVA lands on Douglas and Nolichucky reservoirs must be consistent with the allocations in the plan. TVA would consider the reallocation of a land parcel's management zone designation only under certain limited circumstances outlined in the TVA Land Policy. TVA may consider changing a land management zone designation outside of the normal planning process only for the purposes of providing water access for industrial or commercial recreation operations on privately owned back-lying land or implementing TVA's Shoreline Management Policy, such as to recognize previously established deeded landrights. In such circumstances, however, such a change in allocation of management zones would be subject to approval by the TVA Board or its designee, pending the completion of an appropriate environmental review. TVA would involve the public appropriately during any environmental review for a parcel reallocation.

**Decision**

On November 4, 2010, the TVA Board approved the plan as described in Preferred Alternative C of the FEIS. TVA believes that implementation of Alternative C provides suitable opportunities for developed recreation, conservation of natural resources, and management of sensitive resources. This decision incorporates mitigation measures that would further minimize the potential for adverse impacts to the environment. These measures are listed below.

**Environmentally Preferred Alternative**

The Environmentally Preferred Alternative is Alternative C, under which approximately half of reservoir lands are allocated to Natural Resource Conservation (Zone 4) and Sensitive Resource Management (Zone 3) uses. All parcels with identified sensitive resources are allocated to Zone 3, which allows the least opportunity for land disturbance and is, therefore, the most protective land use zone.

**Mitigation Measures**

TVA is adopting the following measures to minimize environmental impacts:

- TVA has executed a programmatic agreement (PA) with the Tennessee State Historic Preservation Officer for reservoir land management plans (RLMPs) for the identification, evaluation, and treatment of all cultural resources adversely affected by future proposed uses of TVA lands planned in RLMPs. All activities will be conducted in accordance with the stipulations defined in this PA.
- As necessary, based on the findings of any site-specific environmental review, TVA may require the implementation of appropriate mitigation measures, including best management practices as defined in TVA's "General and Standard Conditions/Best Management Practices," as a condition of approval for use of TVA land.
- Landscaping activities on developed properties will not include the use of plants listed as Rank 1 (Severe Threat), Rank 2 (Significant Threat), or Rank 3 (Lesser Threat),on the Tennessee Exotic Plant Pest Council List of Invasive Exotic Pest Plants in Tennessee.
- Revegetation and erosion-control work will utilize seed mixes comprised of native species or noninvasive nonnative species.

With the implementation of the above measures, TVA has determined that adverse environmental impacts of future land development proposals on the TVA-managed reservoir lands would be substantially reduced. Before taking actions that could result in adverse environmental effects or before authorizing such actions to occur on properties it controls, TVA would perform a site-specific environmental review to determine the need for other necessary mitigation measures or precautions. These protective measures represent all of the practicable measures to avoid or minimize environmental harm associated with the alternative adopted by the TVA Board.

Dated: December 6, 2010.

**Anda A. Ray,**

*Senior Vice President, Environment and Technology.*

[FR Doc. 2010–31171 Filed 12–10–10; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Manchester-Boston Regional Airport, Manchester, NH

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for Manchester-Boston Regional Airport, as submitted by the City of Manchester, New Hampshire, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, are in compliance with applicable requirements.

**DATES:** *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is December 3, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lisa J. Lesperance or Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Manchester-Boston Regional Airport are in compliance with applicable requirements of Part 150, effective December 3, 2010.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Manchester, New Hampshire. The specific maps under consideration were Figure 4.2–1, and Figure 4.3–1 in the submission. The FAA has determined that these maps for Manchester-Boston Regional Airport are in compliance with applicable requirements. This determination is effective on December 3, 2010.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on

the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

City of Manchester, Manchester-Boston Regional Airport, One Airport Road, Suite 300, Manchester, NH 03103.

Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on December 3, 2010.

**Michel J. Hovan,**

*Acting Manager, Airports Division.*

[FR Doc. 2010–31178 Filed 12–10–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2008–0291]**

### Pipeline Safety: Information Collection Activities

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on a new information collection for the National Pipeline Registry. PHMSA is preparing to request Office of Management and Budget (OMB) approval for a new information collection.

**DATES:** Interested persons are invited to submit comments on or before February 11, 2011.

**ADDRESSES:** Comments may be submitted in the following ways:

*E–Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility; U.S. DOT, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–0001.

*Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* Identify the docket number, PHMSA–2008–0291, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You should know that 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.*). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

*Docket:* For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA–2008–0291." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

**FOR FURTHER INFORMATION CONTACT:** Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at U.S. DOT, PHMSA, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that PHMSA will be submitting to OMB for approval. The information collection will be titled: "National Registry of Pipeline and Liquefied Natural Gas Operators." PHMSA published a final rule in the **Federal Register** on November 26, 2010 (75 *FR* 72878), titled: "Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements". That final rule added two new sections, 49 CFR 191.21 and 195.64, to the pipeline safety regulations for the establishment of a National Pipeline Safety Registry, which will be used by operators to obtain an Operator Identification (OPID) number. PHMSA is proposing to use two forms as part of this information collection. For an initial OPID number, an online form titled: "OPID Assignment (PHMSA F–1000.1)" will be used. For operators with an OPID who wish to update their information, a form titled: "Operator Registry Notification (PHMSA F–1000.2)" will be used. Copies of these forms have been placed in the docket and are available for comment. The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity.

PHMSA requests comments on the following information collection:

*Title:* National Pipeline Registry.

*OMB Control Number:* Pending.

*Type of Request:* New information collection.

*Abstract:* PHMSA is requiring each operator to have an OPID number. The OPID number will contain detailed information on the operator. In addition, PHMSA is requesting that operators provide PHMSA with update notifications for certain changes to information initially provided by the operator.

*Affected Public:* Pipeline Operators.

*Estimated number of responses:* 2,753 operators.

*Estimated annual burden hours:* 5,506 hours.

*Frequency of collection:* On occasion.

Comments are invited on:

(a) The need for the proposed collection of information 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 proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 3, 2010.

**Linda Daugherty,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2010–31129 Filed 12–10–10; 8:45 am]

BILLING CODE 4910–60–P


Federal Register

Monday,
December 13, 2010

Part II

# Environmental Protection Agency

40 CFR Part 52

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–HQ–OAR–2010–0107; FRL–9236–3]**

**RIN–2060–AQ08**

## Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is issuing a finding that the EPA-approved state implementation plans (SIP) of 13 states (comprising 15 state and local programs) are substantially inadequate to meet Clean Air Act (CAA) requirements because they do not apply Prevention of Significant Deterioration (PSD) requirements to greenhouse gas (GHG)-emitting sources. In addition, EPA is issuing a "SIP call" for each of these states, which requires the state to revise its SIP as necessary to correct such inadequacies. Further, EPA is establishing a deadline for each state to submit its corrective SIP revision. These deadlines, which differ among the states, range from December 22, 2010, to December 1, 2011.

**DATES:** This action is effective on December 13, 2010. The deadline for each state to submit its corrective SIP revision is listed in table IV–1, "SIP Call States and SIP Submittal Deadlines" in the **SUPPLEMENTARY INFORMATION** section of this rule.

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0107. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3450; fax number: (919) 541–5509; e-mail address: *sutton.lisa@epa.gov*.

For information related to a specific state, local, or tribal permitting authority, please contact the appropriate EPA regional office:

| EPA regional office | Contact for regional office (person, mailing address, telephone number) | Permitting authority |
|---|---|---|
| I | Dave Conroy, Chief, Air Programs Branch, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, (617) 918–1661. | Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont. |
| II | Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3706. | New Jersey, New York, Puerto Rico, and Virgin Islands. |
| III | Kathleen Cox, Chief, Permits and Technical Assessment Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2173. | District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia. |
| IV | Lynorae Benjamin, Chief, Regulatory Development Section, Air, Pesticides and Toxics Management Division, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, (404) 562–9033. | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. |
| V | J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–1430. | Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. |
| VI | Jeff Robinson, Chief, Air Permits Section, EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6435. | Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. |
| VII | Mark Smith, Chief, Air Permitting and Compliance Branch, EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7876.. | Iowa, Kansas, Missouri, and Nebraska. |
| VIII | Carl Daly, Unit Leader, Air Permitting, Monitoring & Modeling Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6416. | Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. |
| IX | Gerardo Rios, Chief, Permits Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3974. | Arizona; California; Hawaii and the Pacific Islands; Indian Country within Region 9 and Navajo Nation; and Nevada. |
| X | Nancy Helm, Manager, Federal and Delegated Air Programs Unit, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, (206) 553–6908. | Alaska, Idaho, Oregon, and Washington. |

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

Entities affected by this rule include state and local permitting authorities.[1] In this rule, EPA finds that any state's SIP-approved PSD applicability provisions that do not apply the PSD program to GHG-emitting sources are substantially inadequate to meet CAA requirements, under CAA section 110(k)(5), and such states will be affected by this rule. For example, if a state's PSD regulation identifies its regulated New Source Review (NSR) pollutants by specifically listing each individual pollutant and the list omits GHGs, then the regulation is substantially inadequate.

Entities affected by this rule also include sources in all industry groups, which have a direct obligation under the CAA to obtain a PSD permit for GHGs for projects that meet the applicability thresholds set forth in a GHG PSD rule that EPA recently promulgated, which

[1] For convenience, we refer to "states" in this rulemaking to collectively mean states and local permitting authorities.

[2] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

we refer to as the Tailoring Rule.[2] This independent obligation on sources is specific to PSD and derives from CAA section 165(a). The majority of entities affected by this action are in the following groups:

| Industry group | NAICS[a] |
|---|---|
| Utilities (electric, natural gas, other systems) | 2211, 2212, 2213 |
| Manufacturing (food, beverages, tobacco, textiles, leather) | 311, 312, 313, 314, 315, 316 |
| Wood product, paper manufacturing | 321, 322 |
| Petroleum and coal products manufacturing | 32411, 32412, 32419 |
| Chemical manufacturing | 3251, 3252, 3253, 3254, 3255, 3256, 3259 |
| Rubber product manufacturing | 3261, 3262 |
| Miscellaneous chemical products | 32552, 32592, 32591, 325182, 32551 |
| Nonmetallic mineral product manufacturing | 3271, 3272, 3273, 3274, 3279 |
| Primary and fabricated metal manufacturing | 3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329 |
| Machinery manufacturing | 3331, 3332, 3333, 3334, 3335, 3336, 3339 |
| Computer and electronic products manufacturing | 3341, 3342, 3343, 3344, 3345, 4446 |
| Electrical equipment, appliance, and component manufacturing | 3351, 3352, 3353, 3359 |
| Transportation equipment manufacturing | 3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369 |
| Furniture and related product manufacturing | 3371, 3372, 3379 |
| Miscellaneous manufacturing | 3391, 3399 |
| Waste management and remediation | 5622, 5629 |
| Hospitals/nursing and residential care facilities | 6221, 6231, 6232, 6233, 6239 |
| Personal and laundry services | 8122, 8123 |
| Residential/private households | 8141 |
| Non-residential (commercial) | Not available. Codes only exist for private households, construction and leasing/sales industries. |

[a] North American Industry Classification System.

*B. How is the preamble organized?*

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. How is the preamble organized?
II. Overview of Final Rule
III. Background
A. CAA and Regulatory Context
1. SIP PSD Requirements
2. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-emitting Sources
3. SIP Inadequacy and Corrective Action
4. State PSD SIPs
B. Proposed Action
1. Finding of Substantial Inadequacy and SIP Call
2. Corrective SIP Revision
IV. Final Action and Response to Comments
A. Response to Comments
B. Finding of Substantial Inadequacy and SIP Call
1. Overall Basis
2. State-Specific Actions
C. Requirements for Corrective SIP Revision
1. Application of PSD Program to GHG-Emitting Sources
2. Definition and Calculation of Amount of GHGs
3. Thresholds
D. Response to Procedural and Other Comments
1. Approved SIP PSD Programs That Apply to GHG Sources
2. Opportunity for Notice and Comment
3. Federal Implementation Plan
V. SIP Submittals
A. EPA Action: Findings of Failure To Submit and Promulgation of FIPs; Process for Action on Submitted SIPs
1. Actions on SIP Submittals
2. Findings of Failure To Submit and Promulgation of FIPs
3. Rescission of the FIP
B. Streamlining the State Process for SIP Development and Submittal
C. Primacy of the SIP Process
D. Effective Date
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VII. Judicial Review
VIII. Statutory Authority

## II. Overview of Final Rule

This rulemaking is related to four distinct GHG-related actions recently taken by EPA. Some of these actions, in conjunction with the operation of the applicable CAA provisions, will require stationary sources that emit large amounts of GHGs to obtain a PSD permit before they construct or modify, beginning January 2, 2011. In one of these actions, which we call the Tailoring Rule, EPA limited the applicability of PSD to GHG-emitting sources at or above specified thresholds.[3]

Most states include EPA-approved PSD programs in their state implementation plans (SIPs), and, as a result, they act as the permitting

[2] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

[3] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

authority. Most of these states' PSD programs apply to GHG-emitting sources, and through a separate regulatory action, EPA and these states are now taking steps to limit the applicability of PSD to GHG-emitting sources at or above the Tailoring Rule thresholds. However, 13 states have SIPs with EPA-approved PSD programs that do not apply PSD to GHG-emitting sources, and it is those states that are the subject of this rulemaking.

In this rulemaking, EPA is (i) issuing a finding of substantial inadequacy for 13 states because their EPA-approved SIP PSD programs do not apply to GHG-emitting sources, (ii) issuing a requirement, which we refer to as a SIP call, that these states submit a corrective SIP revision to assure that their PSD programs will apply to GHG-emitting sources, and (iii) establishing the deadline by which each of these states must submit its corrective SIP revision, which differs among the various states and ranges from December 22, 2010, to December 1, 2011. Each of these actions is authorized under CAA section 110(k)(5). The 13 states (some of which include at least one local permitting agency) are: Arizona; Arkansas; California; Connecticut; Florida; Idaho: Kansas; Kentucky; Nebraska; Nevada; Oregon: Texas; and Wyoming.

If a state for which we are finalizing a SIP call in this action does not submit its corrective SIP revision by its deadline, EPA intends to immediately issue to the state a finding of failure to submit a required SIP revision and also immediately promulgate a federal implementation plan (FIP) for the state, under CAA section 110(c)(1)(A). EPA proposed this SIP call and the FIP by separate notices dated September 2, 2010. "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed Rule," 75 FR 53892; "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Proposed Rule," 75 FR 53883.

This SIP call is important because without it, large GHG-emitting sources in these states may be unable to obtain a PSD permit for their GHG emissions and therefore may face delays in undertaking construction or modification projects. This is because without the further action by the states or EPA that the SIP call is designed to lead to, sources that emit or plan to emit large amounts of GHGs will, starting January 2, 2011, be required to obtain PSD permits before undertaking new construction or modification projects, but neither the states nor EPA would be authorized to issue the permits. The SIP call and, in the states in which it is necessary, the FIP will assure that in each of the 13 states—with the exception of Texas—either the state or EPA will have the authority to issue PSD permits by January 2, 2011, or sufficiently soon thereafter so that sources in the state will not be adversely affected by the short-term lack of a permitting authority. We are planning additional actions to ensure that GHG sources in Texas can be issued permits as of January 2, 2011.

The SIP submittal deadlines that this rule establishes for the states reflect, in almost all instances, a recognition by EPA and the states of the need to move expeditiously to assure the availability of a permitting authority. EPA emphasizes that for those states for which EPA proceeds to promulgate a FIP: (i) The purpose of the FIP is solely to assure that industry in the state will be able to obtain required air permits to construct or modify; (ii) EPA encourages the state to assume delegation of the FIP so that the state will become the permit issuer (although administering EPA regulations); and (iii) EPA will rescind the FIP as soon as the state submits and EPA approves a corrective SIP revision.

The corrective SIP revision that this rule requires must: (i) Apply the SIP PSD program to GHG-emitting sources; (ii) define GHGs as the same pollutant to which the Light-Duty Vehicle Rule[4] (LDVR) applies, that is, a single pollutant that is the aggregate of the group of six gases (carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($N_2O$), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride ($SF_6$)); and (iii) either limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule or adopt lower thresholds and show that the state has adequate personnel and funding to administer and implement those lower thresholds.

## III. Background

### *A. CAA and Regulatory Context*

EPA described the relevant background information in the SIP call proposal, 75 FR at 53896–98, as well as in the final Tailoring Rule, 75 FR at 31518–21. Knowledge of this background information is presumed and will be only briefly summarized here.

[4] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

#### 1. SIP PSD Requirements

In general, under the CAA PSD program, as discussed later in this preamble, a stationary source must obtain a permit prior to undertaking construction or modification projects that would result in specified amounts of new or increased emissions of air pollutants that are subject to regulation under other provisions of the CAA. CAA sections 165(a), 169(1), 169(2)(C). The permit must, among other things, include emission limitations associated with the best available control technology (BACT). CAA section 165(a)(4).

Specifically, under the CAA PSD requirements, a new or existing source that emits or has the potential to emit "any air pollutant" in the amounts of either 100 or 250 tons per year (tpy), depending on the source category, cannot construct or modify unless the source first obtains a PSD permit that, among other things, includes emission limitations that qualify as BACT. CAA sections 165(a)(1), 165(a)(4), 169(1). Longstanding EPA regulations have interpreted the term "any air pollutant" more narrowly so that only emissions of any pollutant subject to regulation under the CAA trigger PSD. This interpretation currently is found in 40 CFR 51.166(j)(1), 52.21(j)(2), which applies PSD to any "regulated NSR pollutant," a term that the regulations then define to include four classes of air pollutants, including, as a catch-all, "any pollutant that otherwise is subject to regulation under the Act." 40 CFR 51.166(b)(49)(iv), 52.21(b)(50)(iv).

The CAA contemplates that the PSD program be implemented by the states through their SIPs. CAA section 110(a)(2)(C) requires that:

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that:

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that:

> Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions, CAA section 165(a)(1), 169(1), mandate that SIPs include PSD programs that are applicable to any air pollutant that is subject to regulation under the CAA, including, as discussed later in this preamble, GHGs on and after January 2, 2011.[5]

2. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-emitting Sources

In recent months, EPA has taken four distinct actions related to GHGs under the CAA. Some of these, in conjunction with the operation of the CAA, trigger PSD applicability for GHG-emitting sources on and after January 2, 2011, but focus the scope of PSD on the largest GHG-emitting sources. The first of these four actions was what we call the "Endangerment Finding," which is governed by CAA section 202(a). Based on an exhaustive review and analysis of the science, in December 2009 the Administrator exercised her judgment to conclude that "six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations." The Administrator also found "that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a)."[6] This Endangerment Finding led directly to promulgation of what we call the "Vehicle Rule" or the "LDVR," also governed by CAA section 202(a), in which EPA set standards for the emission of greenhouse gases for new motor vehicles built for model years 2012–2016.[7] The other two actions were what we call the "Johnson Memo Reconsideration" or the "Timing Decision"[8] and the Tailoring Rule and were governed by the PSD and title V provisions in the CAA. EPA issued them to address the automatic statutory triggering of these programs for greenhouse gases due to the Vehicle Rule's establishing the first controls for greenhouse gases under the Act. More specifically, the Johnson Memo Reconsideration provided EPA's interpretation of a pre-existing definition in its PSD regulations delineating the "pollutants" that are taken into account in determining whether a source must obtain a PSD permit and the pollutants each permit must control. Regarding the Vehicle Rule, the Johnson Memo Reconsideration stated that such regulations, when they take effect on January 2, 2011, will, by operation of the applicable CAA requirements, subject GHG-emitting sources to PSD requirements. The Tailoring Rule limited the applicability of PSD requirements to the largest GHG-emitting sources on a phased-in basis.

Certain specific aspects of these rules are important to highlight for purposes of the present action. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—$CO_2$, $CH_4$, $N_2O$, HFCs, PFCs, and $SF_6$—may reasonably be anticipated to endanger public health and welfare. The LDVR included applicability provisions specifying that the rule "contains standards and other regulations applicable to the emissions of those six greenhouse gases." 75 FR at 25686 (40 CFR 86.1818–12(a)).

In the Tailoring Rule, EPA identified the air pollutant that, if emitted or potentially emitted by the source in excess of specified thresholds, would subject the source to PSD requirements, as the aggregate of the same six GHGs ($CO_2$, $CH_4$, $N_2O$, HFCs, PFCs, and $SF_6$), based on the LDVR. The Tailoring Rule further provided that for purposes of determining whether the amount of GHGs emitted (or potentially emitted) exceeded the specified thresholds, it must be calculated on both a mass emissions basis and on a carbon dioxide equivalent ($CO_2e$) basis. With respect to the latter, according to the rule, "PSD * * * applicability is based on the quantity that results when the mass emissions of each of these [six] gases is multiplied by the Global Warming Potential (GWP) of that gas, and then summed for all six gases." 75 FR 31518.

3. SIP Inadequacy and Corrective Action

The CAA provides a mechanism for the correction of SIPs with certain types of inadequacies, under CAA section 110(k)(5), which provides:

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to * * * comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.

This provision by its terms authorizes the Administrator to "find[] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, to "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly referred to as a "SIP call." In addition, this provision provides that EPA must notify the state of the substantial inadequacy and authorizes EPA to establish a "reasonable deadline[] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision.

If EPA does not receive the corrective SIP revision by the deadline, CAA section 110(c) authorizes EPA to "find[] that [the] State has failed to make a required submission." CAA section 110(c)(1)(A). Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time within 2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

4. State PSD SIPs

The states and other jurisdictions in the U.S. may be grouped into three categories with respect to their PSD programs and the applicability of those PSD programs to GHG-emitting sources:

The first category is the states that do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority.[9]

[5] In the Tailoring Rule, we noted that commenters argued, with some variations, that the PSD provisions applied only to National Ambient Air Quality Standards (NAAQS) pollutants, and not GHGs, and we responded that the PSD provisions apply to all pollutants subject to regulation, including GHGs. *See* 75 FR 31560–62; "Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments," May 2010, pp. 38–41. We are not reopening that issue in this rulemaking.

[6] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[7] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[8] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010). This action finalizes EPA's response to a petition for reconsideration of "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (which we call the "Johnson Memo"), December 18, 2008.

[9] EPA identified the first category of states, local jurisdictions, and Indian country, in the proposal for this action. 75 FR at 53898, n. 11. This list is updated in Declaration of Regina McCarthy, *Coalition for Responsible Regulation* v. *EPA*. DC Cir. No. 09–1322 (and consolidated cases) (McCarthy Declaration), Attachment 1, Table 1.

Continued

The second category comprises states that have approved SIP PSD programs that do not apply to GHG-emitting sources. This second category is the subject of this rulemaking and is discussed further in this preamble.

The third category, which includes most of the states, is states that have approved SIP PSD programs that apply to GHG-emitting sources. Those SIPs have PSD applicability provisions that identify, as some or all of the pollutants covered under their PSD program, any "pollutant subject to regulation" under the CAA. Further, in these states, this term in effect is automatically updating so as to cover pollutants that become newly subject to regulation under the CAA without further action by the state. As a result, the PSD programs of these states will apply to GHG emissions as of January 2, 2011, when GHGs become subject to regulation under the LDVR. *See* 40 CFR 52.21(b)(50).[10]

*B. Proposed Action*

1. Finding of Substantial Inadequacy and SIP Call

In the proposal for this rulemaking, EPA proposed the SIP call for 13 states whose SIPs have EPA-approved PSD programs but did not appear to apply to GHG-emitting sources. These 13 states are listed in table III–1:

TABLE III–1—STATES WITH SIPS THAT EPA PROPOSED DO NOT APPEAR TO APPLY PSD TO GHG SOURCES

[Presumptive SIP Call List]

| State (or area) |
|---|
| Alaska |
| Arizona: Pinal County; Rest of State (Excludes Maricopa County, Pima County, and Indian Country) |
| Arkansas |
| California: Sacramento Metropolitan AQMD |
| Connecticut |
| Florida |
| Idaho |
| Kansas |
| Kentucky: Jefferson County; Rest of State |
| Nebraska |
| Nevada: Clark County |
| Oregon |
| Texas |

In the proposal, EPA explained that it had identified these 13 states on the basis of EPA's review of the SIP PSD provisions and other relevant state law, as well as the views of the states as expressed in their written statements to EPA following promulgation of the Tailoring Rule and in other communications with the EPA regions. EPA further explained that this information appeared to indicate that these SIP PSD provisions did not apply to GHG-emitting sources because of one or another of the following problems, depending on the state: (i) The PSD applicability provision applies to any "pollutant subject to regulation" under the CAA, but other provisions of state law preclude what we call automatic - updating or forward adoption, so that this applicability provision covers only pollutants—not including GHGs—that were subject to regulation at the time the state promulgated or enacted the applicability provision; (ii) the PSD applicability provision does not apply to any "pollutant subject to regulation" under the CAA and instead applies to only specifically identified pollutants, not including GHGs; or (iii) the SIP explicitly precludes regulation of $CO_2$. On the other hand, EPA further recognized in the proposal that a state that fits into one of the earlier-described subcategories might nevertheless have in its SIP or other state laws a "general authority clause" that affirms the state's legal authority to issue, and enforce compliance with, permits that are consistent with federal requirements. In this case, the SIP, read as a whole, may be considered to apply PSD to GHG sources. Even so, we added that if a SIP appeared ambiguous as to whether it applied PSD to GHG-emitting sources (*e.g.*, it includes an applicability provision that explicitly excludes GHG sources but also includes a general-authority provision that could be read to authorize permitting of GHG sources), we would consider the SIP PSD program not to apply to GHG sources.

As a related matter, we noted that if a state with a SIP that did not appear to apply PSD to GHG-emitting sources submitted a SIP revision prior to December 1, 2010—the date EPA intended to issue the SIP call—EPA would not include that state in the SIP call.

EPA included with the proposal a technical support document (TSD) that addressed each state with an approved PSD program that did not at time of proposal appear to apply to GHG-emitting sources. The TSD referenced the applicable state law and the position of the state as to PSD applicability for GHG-emitting sources, based on communications to EPA. EPA also included in the TSD much the same information for each state with an approved PSD program that did at time of proposal appear to apply to GHG-emitting sources.

For each of the 13 states, EPA proposed to issue a finding that the SIP is "substantially inadequate * * * to * * * comply with any requirement of [the CAA]" and EPA proposed to "require the State to revise the plan as necessary to correct such inadequacies," *i.e.*, EPA proposed to issue a SIP call in accordance with CAA section 110(k)(5). EPA explained that the reference in CAA section 110(k)(5) to "any requirement of [the CAA]" includes the PSD requirements and that SIPs are therefore required to include PSD programs that apply to sources that emit pollutants subject to regulation. As a result, EPA proposed the 13 states' SIPs merit a finding of substantial inadequacy because they fail to apply the PSD program to GHG-emitting sources on and after January 2, 2011. EPA further proposed that because the SIPs merit a finding of substantial inadequacy, EPA is authorized to issue a SIP call and thereby require a corrective SIP revision.

EPA invited comment on its legal interpretation of the 13 states' SIPs and made clear that for any of these states, if EPA did not receive any further information from the state or other commenters indicating that EPA's proposed interpretation was incorrect, EPA intended to finalize the SIP call, but that on the other hand, if EPA did receive further information indicating that the proposed interpretation was incorrect, then EPA would not finalize the SIP call.

In addition, EPA specifically solicited comment on its interpretation that the approved SIPs for the other states do appear to apply their PSD program to GHG-emitting sources. EPA indicated that if it received comments indicating, for any of these latter states, that the SIP does not apply PSD to GHG sources, then, without further proposed action, EPA would issue a final finding of substantial inadequacy and SIP call for

which can be found in the docket for this rulemaking, except that the Northern Mariana Islands and the Trust Territories also fall into this category. EPA is not taking any final action with respect to these jurisdictions, and EPA's identification of them in this action is for informational purposes only.

[10] EPA included in the proposal a list of states and local jurisdictions that appeared to fall into this third category. 75 FR at 53899, table IV–2. This list is updated in Declaration of Regina McCarthy, *Coalition for Responsible Regulation* v. *EPA*, DC Cir. No. 09–1322 (and consolidated cases) (McCarthy Declaration), Attachment 1, Table 3, which can be found in the docket for this rulemaking. Except to the extent discussed later in this preamble, EPA is not taking final action in this rule with respect to these states and local jurisdictions.

that state. EPA identified these states as listed in table III–2, "States with SIPs that EPA Proposed Appear to Apply PSD to GHG Sources (Presumptive Adequacy List)." [11]

TABLE III–2—STATES WITH SIPS THAT EPA PROPOSED APPEAR TO APPLY PSD TO GHG SOURCES

[Presumptive Adequacy List]

| State (or area) |
|---|
| Alabama: Jefferson County; Huntsville; Rest of State |
| California: Mendocino County AQMD; Monterey Bay Unified APCD; North Coast Unified AQMD; Northern Sonoma County APCD |
| Colorado |
| Delaware |
| Georgia |
| Indiana |
| Iowa |
| Louisiana |
| Maine |
| Maryland |
| Michigan |
| Mississippi |
| Missouri |
| Montana |
| New Hampshire |
| New Mexico: Albuquerque; Rest of State |
| North Carolina: Forsyth County; Mecklenburg; Western NC; Rest of State |
| North Dakota |
| Ohio |
| Oklahoma |
| Pennsylvania: All except Allegheny County [12] |
| Rhode Island |
| South Carolina |
| South Dakota |
| Tennessee: Chattanooga; Nashville; Knoxville; Memphis; Rest of State |
| Utah |
| Vermont |
| Virginia |
| West Virginia |
| Wisconsin [13] |
| Wyoming [13] |

[11] Note that in this final rule, except for any of these states for which EPA is making a finding of substantial inadequacy and issuing a SIP call, EPA is not taking any action with respect to these states.

[12] Pennsylvania's Philadelphia County correctly belongs in the category of states that do not have PSD programs approved into their SIPs. We note this correction for informational purposes only, as it has no bearing on this rulemaking. A corrected table III–2 would list, "Pennsylvania: All except Allegheny County and Philadelphia County." However, we have not reflected the correction in table III–2 itself, for the reason that the table represents our proposed list. In addition, as noted above, an updated version of this category of jurisdictions—those that have approved PSD SIPs that apply to GHG-emitting sources—appears in Declaration of Regina McCarthy, *Coolition for Responsible Regulation* v. *EPA*, DC Cir. No. 09–1322 (and consolidated cases) (McCarthy Declaration), Attachment 1, Table 3, which can be found in the docket for this rulemaking.

[13] Note that in this final action, we are issuing a SIP call for Wyoming, based on information submitted by the state during the SIP call comment period.

We further stated in the proposal that we intended to finalize the finding of substantial inadequacy and the SIP call on or about December 1, 2010, approximately one month in advance of the January 2, 2011, date when PSD requirements will first apply to GHG-emitting sources. We justified this timing on the need to give sources notice that the PSD requirements apply. In addition, we recognized that as a practical matter, some states would not object to our imposing a FIP effective as of January 2, 2011, in order to avoid any period of time when the GHG-emitting sources identified in the Tailoring Rule as subject to PSD would be unable to obtain a permit due to lack of a permitting authority to process their PSD applications. We observed that we could not impose a FIP until we have first finalized the SIP call and given the state a reasonable period of time to make the corrective SIP submission.

In the proposal, we also described in greater detail the process for finalizing the SIP call. We stated that we would issue the final SIP call for any state for which we had concluded that the PSD program did not as of that date apply to GHG-emitting sources. However, if a state that was included in the proposed SIP call were to submit a SIP revision by December 1, 2010, that purported to correct that inadequacy, we would not finalize the finding or SIP call for that state. Rather, we would take action on its SIP submittal as promptly as possible. While we will strive to expedite approval of such SIP submissions, we could not commit in the proposal to approving them by January 2, 2011. We therefore cautioned in our proposal (*see* 75 FR at 53904) that states with submitted (but not EPA-approved) SIP revisions will not be able to issue federally approved PSD permits until those SIP revisions are approved. We stated that for all other states for which we concluded that the PSD program did not apply to GHG sources, on or about December 1, 2010, we would make the finding of substantial inadequacy and issue the SIP call in a final rule and submit the notice for the rule for publication in the **Federal Register** as soon as possible thereafter. We stated that at the same time, we would also notify the state of the finding of substantial inadequacy by letter and by posting the signed SIP call rulemaking on our Web site. In view of the urgency of the task, which is to do everything possible to ensure that a PSD permitting authority for affected GHG sources is in place by January 2, 2011, we proposed to give the final SIP call an effective date of its publication date. We recognized that this process is highly expedited, but we stated that it was essential to maximize our and the states' opportunity to put in place a permitting authority to process PSD permit applications beginning on January 2, 2011, without which sources may be unable to proceed with plans to construct or modify.

In the proposal, EPA discussed in some detail the SIP submittal deadline it was proposing to establish under CAA section 110(k)(5). Under this provision, in notifying the state of the finding of substantial inadequacy and issuing the SIP call, EPA "may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions." EPA proposed to allow the state up to 12 months from the date of signature of the final finding of substantial inadequacy and SIP call within which to submit the SIP revision, unless, during the comment period, the state expressly advised that it would not object to a shorter period—as short as 3 weeks from the date of signature of the final rule—in which case EPA would establish the shorter period as the deadline. EPA stated that, assuming that EPA were to finalize the SIP call on or about December 1, 2010, as EPA said it intended to do in the proposal, then the earliest possible SIP submittal deadline would be December 22, 2010.

A few states did not inform EPA until after the end of the comment period for the proposed SIP call that they would not object to a deadline earlier than December 2011. Nevertheless, we considered their responses when establishing their SIP submittal deadlines in this final action.

EPA made clear that the purpose of establishing the shorter period as the deadline—for any state that advises us that it does not object to that shorter period—is to accommodate states that wish to ensure that a FIP is in effect as a backstop to avoid any gap in PSD permitting. EPA also made clear that if a state did not advise EPA that it does not object to a shorter deadline, then the 12-month deadline would apply. EPA emphasized that for any state that receives a deadline after January 2, 2011, the affected GHG-emitting sources in that state may be delayed in their ability to receive a federally approved permit authorizing construction or modification. That is, after January 2, 2011, these sources may not have available a permitting authority to review their permit applications until

the date that EPA either approves the SIP submittal or promulgates a FIP.

EPA proposed that this 3-week-to-12-month time period, although expedited, meets the CAA section 110(k)(5) requirement as a "reasonable" deadline in light of: (i) The SIP development and submission process; (ii) the preference of the state; and (iii) the imperative to minimize the period when sources will be subject to PSD but will not have available a PSD permitting authority to act on their permit application and therefore may face delays in constructing or modifying.

2. Corrective SIP Revision

EPA proposed certain requirements for each state receiving a SIP call. The central requirement is that the corrective SIP revision must apply the PSD program to GHG-emitting sources. EPA proposed two different ways for the SIP revision to do so: First, the SIP revision could revise the PSD applicability provisions or other provisions of the SIP or state law that affect PSD applicability, to assure that the PSD applicability provisions are automatically updating. This means that these provisions would apply PSD to any air pollutant as soon as the pollutant becomes newly subject to regulation under the CAA. As a result, the PSD applicability provisions will apply to GHGs as of January 2, 2011. In this case, EPA would approve the SIP revision as fully meeting the CAA requirements. Second, and as an alternative, the SIP revision could simply specifically identify GHGs as subject to PSD applicability, in which case EPA would approve the SIP revision on the basis that the revision is SIP-strengthening, as discussed later in this preamble.

In addition, EPA proposed to require that the corrective SIP revision, in applying the PSD program to GHG-emitting sources, must either limit PSD applicability to GHG-emitting sources at or above the Tailoring Rule thresholds or adopt lower thresholds. However, EPA added that if the state adopts lower thresholds, then the state must demonstrate that it has "adequate personnel [and] funding * * * to carry out," that is, administer and implement, the PSD program with those lower thresholds, in accordance with CAA section 110(a)(2)(E)(i).

EPA also noted in the proposal that the state must define GHGs as a single pollutant that is the aggregate of the group of six gases: $CO_2$, $CH_4$, $N_2O$, HFCs, PFCs, and $SF_6$, which is the pollutant that the LDVR subjected to regulation. EPA further noted in the proposal that in the Tailoring Rule, EPA adopted a carbon dioxide equivalent ($CO_2e$) metric and use of short tons (as opposed to metric tons) for calculating GHG emissions in order to implement the Tailoring Rule thresholds. 75 FR at 31530, 31532. A state retains the authority to adopt lower thresholds than in the Tailoring Rule in order to meet statutory requirements, and, as a result, EPA stated in the proposal that the state is not obligated to adopt the $CO_2e$ metric or use of short tons in the corrective SIP revision. However, if the state wishes to adopt the Tailoring Rule thresholds, but through a different approach, then the state must assure that its approach is at least as stringent as under the Tailoring Rule.

As we noted in the preamble to the proposed rulemaking (75 FR at 53902), EPA issued a Call for Information (CFI) to solicit public comment and data on technical issues that might be used to consider biomass fuels and the emissions resulting from their combustion differently with regard to applicability under PSD and with regard to the BACT review process under PSD. Subsequently, EPA discussed these considerations in its "PSD and Title V Permitting Guidance for Greenhouse Gases" [14] that was released on November 10, 2010, and made available for public comment. In that GHG permitting guidance document, EPA described on pages 8 through 10 how permitting authorities may consider the use of biomass for energy generation when carrying out their BACT analyses for GHGs. EPA also described plans for future guidance regarding analysis of the environmental, energy, and economic benefits of biomass in GHG BACT determinations.[15]

[14] See *http://www.epa.gov/nsr/ghgpermitting.html/*for more information on EPA's recent GHG permitting guidance document and on EPA's other permitting guidance for GHGs.

[15] Specifically, we stated the following in "PSD and Title V Permitting Guidance for Greenhouse Gases," pages 8–10: In the annual US inventory of GHG emissions and sinks, EPA has reported that the Land-Use, Land-Use Change and Forestry (LULUCF) sector (including those stationary sources using biomass for energy) in the United States is a net carbon sink, taking into account the carbon gains (e.g., terrestrial sequestration) and losses (e.g., emissions or harvesting) from that sector. [*Footnote:* 2010 US Inventory Report at *http://epa.gov/climatechange/emissions/usinventoryreport.html.*] On the basis of the Inventory results and other considerations, numerous stakeholders requested that EPA exclude, either partially or wholly, emissions of GHG from bioenergy and other biogenic sources for the purposes of the BACT analysis and the PSD program based on the view that the biomass used to produce bioenergy feedstocks can also be a carbon sink and therefore management of that biomass can play a role in reducing GHGs. [*Footnote:* GHG emissions from bioenergy and other biogenic sources are generated during combustion or decomposition of biologically-based material, and include sources such as utilization of forest or agricultural products for energy, wastewater treatment and livestock management facilities, and fermentation processes for ethanol production.] EPA plans to provide further guidance on the how to consider the unique GHG attributes of biomass as fuel.

Even before EPA takes further action, however, permitting authorities may consider, when carrying out their BACT analyses for GHG, the environmental, energy and economic benefits that may accrue from the use of certain types of biomass and other biogenic sources (*e.g.*, biogas from landfills) for energy generation, consistent with existing air quality standards. In particular, a variety of federal and state policies have recognized that some types of biomass can be part of a national strategy to reduce dependence on fossil fuels and to reduce emissions of GHGs. Federal and state policies, along with a number of state and regional efforts, are currently under way to foster the expansion of renewable resources and promote biomass as a way of addressing climate change and enhancing forest-management. EPA believes that it is appropriate for permitting authorities to account for both existing federal and state policies and their underlying objectives in evaluating the environmental, energy and economic benefits of biomass fuel. Based on these considerations, permitting authorities might determine that, with respect to the biomass component of a facility's fuel stream, certain types of biomass by themselves are BACT for GHGs.

To assist permitting authorities further in considering these factors, as well as to provide a measure of national consistency and certainty, EPA intends to issue guidance in January 2011 that will provide a suggested framework for undertaking an analysis of the environmental, energy and economic benefits of biomass in Step 4 of the top-down BACT process, that, as a result, may enable permitting authorities to simplify and streamline BACT determinations with-respect to certain types of biomass.

The guidance will include qualitative information on useful issues to consider with respect to biomass combustion, such as specific feedstock types and trends in carbon stocks at different spatial scales (national, regional, state). The aim of the information will be to assist permitting authorities in evaluating "carbon neutrality" in the assessment of environmental, energy and economic impacts of control strategies under Step 4 of the BACT process, which, again, may enable the streamlining of BACT determinations with respect to certain types of biomass. The agency is currently reviewing the comments received in response to the July 15, 2010 Call for Information (CFI) that solicited feedback from stakeholders on approaches to accounting for GHG emissions from bioenergy and other biogenic sources. [*Footnote:* The Call for Information was published on July 15, 2010. (75 FR 41173 and 75 FR 45112). EPA received over 7,000 comments and is still assessing them.] These comments, among other things, suggest that certain biomass feedstocks (*e.g.*, biogas) may be considered carbon neutral with minor additional analysis. Such a carbon benefit may further inform the BACT process, especially where a permitting authority considers the net carbon impact or carbon-neutrality of certain feedstocks in accounting for the broader environmental implications of using particular biomass feedstocks.

Finally, EPA also plans to determine by May 2011, well before the start of the second phase of PSD implementation pursuant to the Tailoring Rule, whether the issuance of a supplemental rule is appropriate to address whether the Clean Air Act would allow the Agency and permitting authorities or permitted sources, when determining the applicability of PSD permitting requirements to sources of biogenic emissions, to quantify carbon emissions from bioenergy or biogenic sources by applying separate accounting rules for different

## IV. Final Action and Response to Comments

### A. Process for Response to Comments

We proposed our SIP call and FIP actions as companion proposals. Both proposals were signed by the Administrator and made publicly available on August 12, 2010, and both proposals were published in the **Federal Register** on September 2, 2010. The SIP call and FIP actions share a rulemaking docket, and the majority of comments that were submitted to EPA during the proposals' comment periods were provided in the form of a letter that intermingled comments on the SIP call and the FIP actions. We respond to comments on the SIP call proposal in this preamble, in a Response to Comment Document for the SIP call, and in a Supplemental Information Document for the SIP call. The Response to Comment Document and Supplemental Information Document can be found in the docket for this action. We will respond to comments on the FIP when we finalize that action.

### B. Finding of Substantial Inadequacy and SIP Call

In this action, EPA is finalizing its proposal, under CAA section 110(k)(5), to: (i) Issue a finding that the SIPs for 13 states (comprising 15 state and local programs) are "substantially inadequate to * * * comply with any requirement of this Act" because their PSD programs do not apply to GHG-emitting sources as of January 2, 2011; (ii) "require[] the state[s] to revise the [SIP] * * * to correct such inadequacies," that is, to issue a SIP call requiring submission of a corrective SIP revision; and (iii) establish a "reasonable deadline[] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision. This deadline ranges, for different states, from 3 weeks to 12 months after the date of this action. The 13 states and their deadlines are listed in table IV–1, "SIP Call States and SIP Submittal Deadlines":

TABLE IV–1—SIP CALL STATES AND SIP SUBMITTAL DEADLINES

| State (or area) | SIP submittal deadline |
|---|---|
| Arizona: Pinal County | 12/22/10 |
| Arizona: Rest of State (Excludes Maricopa County, Pima County, and Indian Country) | 12/22/10 |
| Arkansas | 12/22/10 |
| California: Sacramento Metropolitan AQMD | 01/31/11 |
| Connecticut | 03/01/11 |
| Florida | 12/22/10 |
| Idaho | 12/22/10 |
| Kansas | 12/22/10 |
| Kentucky (Jefferson County): Louisville Metro Air Pollution Control District | 01/01/11 |
| Kentucky: Rest of State (Excludes Louisville Metro Air Pollution Control District (Jefferson County)) | 03/31/11 |
| Nebraska | 03/01/11 |
| Nevada: Clark County | 07/01/11 |
| Oregon | 12/22/10 |
| Texas | 12/01/11 |
| Wyoming | 12/22/10 |

This final rule is consistent with EPA's proposal, except that (i) EPA is not finalizing the SIP call with respect to one state for which EPA proposed the SIP call, namely Alaska, because it has already submitted a revised SIP, and (ii) EPA is finalizing the SIP call with respect to one state for which EPA solicited comment but did not propose the SIP call, namely Wyoming.

In this section of this preamble, we: (1) Explain in detail our overall basis for these actions, including responding to comments on that overall basis; and (2) explain concisely our basis for action for each of the 13 states. In a Supplemental Information Document, which can be found in the docket for this rulemaking, we include more detail for our explanations and we respond to state-specific comments we received in response to the proposed actions.

#### 1. Overall Basis

##### a. Finding of Substantial Inadequacy: Final Action and Response to Comments

###### (i) Final Action

Our overall basis for issuing the finding of substantial inadequacy and issuing the SIP call for the 13 states is the same as we stated during the proposal. As summarized earlier in this preamble, for each of these 13 states, EPA finds that the failure of the SIP PSD applicability provisions to apply to GHG-emitting sources renders the SIP "substantially inadequate * * * to * * * comply with any requirement of [the CAA]" and as a result, EPA "require[s] the State to revise the plan as necessary to correct such inadequacies," *i.e.*, issues a SIP call, all in accordance with CAA section 110(k)(5).

We consider the legal basis to be straightforward. CAA section 110(k)(5), as quoted earlier in this preamble, authorizes EPA to issue a finding that a SIP is "substantially inadequate" to meet CAA requirements. The CAA does not define the quoted term, and as a result, it should be given its ordinary, everyday meaning. In the present case, the failure of a SIP to apply PSD to GHG-emitting sources means that the SIP is "substantially inadequate" to comply with CAA requirements because (i) The CAA requires that SIP PSD programs apply PSD to GHG-emitting sources, (ii) the SIPs at issue fail to do so, and (iii) applying PSD to GHG-emitting sources would affect a large number of sources and permitting actions.

CAA section 110(k)(5) authorizes EPA to issue a finding of substantial inadequacy whenever the SIP fails to comply with "any requirement of [the CAA]." CAA section 165(a)(1) provides that "[n]o major emitting facility * * * may be constructed * * * unless * * * a [PSD] permit has been issued for such proposed facility in accordance with this part." CAA section 169(1) defines "major emitting facility" as any stationary source that emits specified quantities of "any air pollutant." EPA regulations have long defined "any air pollutant" as, at least in part, "any pollutant * * * subject to regulation under the Act." 40 CFR 52.21(b)(50)(iv). Further, CAA section 161 requires SIPs to contain "emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality * * *" and CAA section 110(a)(2)(J) requires that "[e]ach [SIP] * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality." Reading these provisions together, the CAA requires that PSD requirements apply to any stationary source that emits specified quantities of any air pollutant subject to regulation under the CAA, and those PSD requirements must be included in the approved SIPs.[16]

types of feedstocks that reflect the net impact of their carbon emissions. This determination will take into consideration both the LULUCF inventory and the full record of responses to the CFI.

[16] EPA has long interpreted the PSD applicability provisions in the CAA to be self-executing, that is, they apply by their terms so that a source that emits any air pollutant subject to regulation becomes subject to PSD—and, therefore, cannot construct or modify without obtaining a PSD permit—and these provisions apply by their terms in this manner regardless of whether the state has an approved SIP PSD program. What's more, until an applicable implementation plan is in place—either an approved SIP or a FIP—no permitting authority is

Continued

As of January 2, 2011, GHG-emitting sources will become subject to PSD. As a result, the CAA provisions described earlier in this preamble require PSD programs to apply to GHG-emitting sources. Accordingly, it is clear that the failure of any SIP PSD applicability provisions to apply the PSD program to GHG-emitting sources means that the SIP fails to comply with these CAA requirements.

Moreover, in this case, the failure of the SIPs to apply PSD to GHG-emitting sources will affect a substantial number of sources and permitting actions. EPA estimated in the Tailoring Rule that on a nationwide basis, many of the sources that now require PSD permit applications due to their emissions of non-GHG pollutants (which we call "anyway" sources) also emit GHG pollutants in quantities that will trigger the application of PSD. On average, on an annual basis nationwide, these sources submit 688 PSD permit applications. 75 FR at 31540. In addition, EPA estimated that beginning on July 2, 2011, on an annual basis nationwide, another 917 permit applications would potentially be submitted due to the GHG emissions of sources undertaking construction or modification activities, even though these sources' other pollutants would not, in and of themselves, trigger PSD. *Id.* Thus, large numbers of permitting actions are at issue. Moreover, the principal PSD requirement that will apply to GHG-emitting sources is the requirement to implement BACT, which is the principal mechanism under the PSD provisions for controlling emissions from non-NAAQS pollutants.

The failure of a SIP to apply PSD to GHG-emitting sources—when the SIP is required to apply PSD to GHG-emitting sources and when doing so would, on average, result in a significant number of additional permitting actions subject to PSD—justifies a finding by the Administrator that a SIP that does not apply PSD to such sources as of January 2, 2011, is "substantially inadequate" to comply with CAA requirements.

authorized to issue a permit to the source. In a recent decision, the 7th Circuit, mistakenly citing to PSD provisions when the issue before the court involved the separate and different non-attainment provisions of CAA sections 171–193, concluded that sources could continue to abide by permitting requirements in an existing SIP until amended, even if that SIP does not comport with the law. *United States* v. *Cinergy Corp.*, No. 09–3344, 2010 WL 4009180 (7th Cir. Oct. 12, 2010). In stark contrast to the nonattainment provisions actually at issue in Cinergy—which are not self-executing and must therefore be enforced through a SIP—PSD is self-executing; it is the statute (CAA section 165), not just the SIP, that prohibits a source from constructing a project without a permit issued in accordance with the Act.

(ii) Response to Comments

(I) Pollutants Subject to the SIP Call

Some commenters stated that failure of a SIP to require PSD permits for GHG-emitting sources does not constitute a "substantial[] inadequa[cy]" under CAA section 110(k)(5). In making this point, the commenters first state that "PSD can only be triggered by pollutants for which EPA has issued a national ambient air quality standard ("NAAQS") and only in attainment areas for such pollutants." The commenters go on to assert that whether a SIP can be considered substantially inadequate due to its failure to require PSD permits depends on the extent to which the foregone controls "affect * * * the state's ability to attain a NAAQS." Then, the commenters claim that the numbers of permits that the state would be required to issue that would include GHG controls beginning January 2, 2011, will be such "a small number" that "the lack of a BACT limit for [GHGs] would not affect in any way the state's ability to attain a NAAQS." The commenters explain that the number of permits that would be required for GHG sources under the Tailoring Rule is limited to, on an annual basis, on average, in each state, (i) beginning as of January 2, 2011, "one or two permits" for sources that would be subject to PSD anyway due to their emissions of other pollutants (which, again, we call "anyway" sources), plus (ii) beginning as of July 1, 2011, 11 permits for sources that would become subject to PSD solely because of their emissions of GHGs.[17] Again, the commenters assert that the controls foregone from this "small number" of permits would have too little an impact on a state's ability to attain a NAAQS to justify finding the SIP to be substantially inadequate under CAA section 110(k)(5).

We find this argument unpersuasive for several reasons. Most importantly, we do not accept what appear to be the premises of this argument, which are that PSD can only be triggered for NAAQS pollutants and that whether deficiencies in a PSD program can render a SIP substantially inadequate depend only on whether any foregone controls affect the state's ability to maintain a NAAQS. In the Tailoring Rule, we addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and we concluded that as a matter of *Chevron* Step 1, this view was incorrect and that, instead, PSD applies to non-NAAQS pollutants, including GHGs. (*See* discussion in Tailoring Rule preamble, 75 FR at 31514 and elsewhere.)[18] In this rulemaking, we are not reopening that issue. We did not solicit comment on it and our response to this comment should not be construed to be a reopening.

Second, we believe that the commenters have understated the number of permitting actions that will involve GHG controls. As noted earlier in this preamble, we provided estimates of the numbers of permits in the Tailoring Rule. There, we addressed at length the numbers of permitting actions that would involve GHGs, including soliciting comment on our proposed estimates and revising our final estimates based on comments received. In this rulemaking, the GHG PSD SIP call, we are not reopening that issue. We did not solicit comment on it and our response to this comment should not be construed to be a reopening. As noted earlier in this preamble and also in the Tailoring Rule, we estimated that on an annual basis, nationwide, beginning January 2, 2011, there would be 688 permitting actions for "anyway" sources that would require GHG controls, and, beginning July 1, 2011, there would be an additional 917 permitting actions per year. These totals are significantly higher than the commenters' estimates.[19]

Commenters also state that "EPA's own actions further reveal the flaw in its analysis." They note that EPA has proposed to issue the SIP call on grounds that some of the SIPs apply PSD to only criteria pollutants and not

[17] In another part of their comments, commenters state that the total number of affected permits is "a few permits with GHG limits in the first 6 months of 2011."

[18] We also explained our view that PSD may be triggered by non-NAAQS pollutants such as GHGs in the Tailoring Rule response to comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation* v. *EPA*, DC Cir. No. 09–1322 (and consolidated cases)), at 47–59.

[19] Although, again, we are not reopening in this rule the issue of the number of permits that would include GHG controls, we note the following additional reasons why we do not find the commenters' estimates persuasive: (i) The commenters stated that they were adjusting downward what they described as EPA's estimates for "anyway" sources, but the commenters did not provide a basis for that downward adjustment. (ii) Some of the commenters have also brought lawsuits against the Tailoring Rule, and in court papers filed at approximately the same time as their comments in this rulemaking, they stated that the numbers of affected permits would be significantly higher than the numbers that they stated in their comments in this rulemaking. National Association of Manufacturers, *et al.*, "Petitioner's Motion for Partial Stay of EPA's Greenhouse Gas Regulations," *Coalition for Responsible Regulation* v. *EPA*, DC Cir. No. 09–1322 (and consolidated cases) at 45, 47.

to pollutants other than criteria pollutants, and they state that these SIPs have applied to only criteria pollutants for "many years." The commenters argue that EPA has never, up until now, issued a SIP call on the basis that the PSD provisions in the SIPs do not cover pollutants more broadly.

Commenters appear to infer from EPA's failure to have initiated a SIP call for these states in the past an indication that EPA does not have authority to do so. That inference is simply incorrect. An agency's not taking certain action at one point in time does not indicate a lack of authority to take that action, nor is the agency required to explain its earlier inaction in order to justify subsequent action. An agency may properly address an issue in step-by-step fashion. *See, e.g., Grand Canyon Air Tour Coalition* v. *F.A.A.,* 154 F.3d 455 (DC Cir. 1998), *City of Las Vegas* v. *Lujan,* 891 F.2d 927 (DC Cir. 1989). 75 FR at 31544. In addition, as discussed later in this preamble, EPA has discretion in deciding whether, and when, to issue a finding of substantial inadequacy. Moreover, commenters have pointed to no statements by EPA indicating that SIPs that do not apply PSD to all pollutants subject to regulation fully meet CAA requirements; on the contrary, in the 2002 NSR Reform rule,[20] EPA specifically required SIP revisions to apply PSD to all pollutants subject to regulation.

(II) Requirements of Tailoring Rule

(A) Comment

Some industry commenters stated that EPA had no basis to issue a SIP call, and so should withdraw the proposal, because EPA was required to give states 3 years from the date the Tailoring Rule was published (June 3, 2010) to submit SIP revisions implementing PSD requirements for GHG-emitting sources. The commenters' premise is that without the Tailoring Rule, PSD would not apply to GHG-emitting sources, and the Tailoring Rule imposed the requirement that PSD applies to GHG-emitting sources. As evidence for its premise that the Tailoring Rule imposed this requirement, the commenters point to the fact that EPA codified certain provisions in 40 CFR 51.166, including, for example, provisions concerning the definition of GHGs.

As a corollary to their premise, the commenters take the position that EPA regulations establishing the process for SIPs to adopt PSD program requirements govern and, therefore, require EPA to give the states up to 3 years to submit their SIP revisions that incorporate what the commenters view as the Tailoring Rule's requirement to apply PSD to GHG-emitting sources. *See* 40 CFR 51.166(a)(6) ("Any state required to revise its implementation plan by reason of an amendment to this section, including any amendment adopted simultaneously with this paragraph (a)(6)(i), shall adopt and submit such plan revision to the Administrator for approval no later than three years after such amendment is published in the Federal Register."). The commenters add that during this 3-year period, the Tailoring Rule requirements that PSD applies to GHG-emitting sources do not apply in the states. Rather, according to the commenters, state permitting authorities may continue to issue PSD permits that do not include requirements for GHGs.

Commenters also argue that CAA section 110(a)(1), which requires SIP submittal "within 3 years (or such shorter period as the Administrator may prescribe)," supports a 3-year period for the SIPs required under the SIP call. Another commenter takes a similar position but points to CAA section 166, which, the commenter asserts, provides a 21-month period for SIP submissions and also prevents the application of PSD to GHG-emitting sources in the meantime.

Turning to the SIP call, the commenters view the purpose of the SIP call as requiring the state to adopt what the commenters call the Tailoring Rule's requirements to apply PSD to GHG-emitting sources. The commenters assert that because, in their view, the adoption process of 40 CFR 51.166(a)(6) applies—which allows states 3 years to adopt the SIP revision and, in the meantime, allows states to continue to issue permits without GHG controls—the SIP call (with its 12-month or shorter deadlines) does not apply and EPA should withdraw its SIP call proposal.

Continuing to focus on the SIP call, one of the industry commenters adds: "In the proposed SIP Call rule, EPA characterizes the Tailoring Rule as creating a PSD permit moratorium, beginning on the [January 2, 2011 and July 1, 2011 phase-in] dates, with regard to those sources whose GHG emissions are above the applicable Tailoring Rule thresholds." This commenter argues that "EPA's premise that the Tailoring Rule imposes a construction moratorium, absent a SIP revision or a FIP, beginning on January 2, 2011, is unlawful and should be abandoned." This commenter appears to ascribe to EPA the view that the construction ban is a sort of sanction that EPA may impose; the commenter appears to read the proposed SIP call as characterizing the Tailoring Rule as attempting to use the construction moratorium in that manner. The commenter does not cite any statement in the proposed SIP call that characterizes the Tailoring Rule in that manner or any provision in the Tailoring Rule that could be read to attempt to use the construction moratorium in that manner.

(B) Response

The commenters have misstated what the Tailoring Rule did and, in so doing, have misstated the source of the requirement that PSD applies to GHG-emitting sources. Contrary to what the commenters state, the Tailoring Rule did not establish the requirement that PSD apply to GHG-emitting sources. This requirement was established by operation of the applicable CAA provisions, in conjunction with the LDVR. That is, the CAA requirements (i) prohibit "major emitting facilit[ies]" from constructing or modifying without obtaining a permit that meets the PSD requirements, CAA section 165(a)(1), and (ii) define a "major emitting facility" as a source that emits a specified quantity of "any air pollutant," CAA section 169(1), which EPA has long interpreted as any pollutant subject to regulation. In this manner, the CAA requirements for PSD applicability are what we call automatically updating, that is, whenever EPA regulates a previously unregulated pollutant, PSD applies at that time to that pollutant without further regulatory action by EPA.

EPA regulations have long codified this automatically updating aspect of the CAA PSD requirements. *See* 43 FR 26380, 26403/3, 26406 (June 19, 1978) (promulgating 40 CFR 51.21(b)(1)(i)) and 42 FR 57479, 57480, 57483 (November 3, 1977) (proposing 40 CFR 51.21(b)(1)(i)) (applying PSD requirements to a "major stationary source" and defining that term to include sources that emit specified quantities of "any air pollutant regulated under the Clean Air Act"). Most recently, in our 2002 NSR Reform rule, EPA reiterated these requirements, although changing the terminology. 67 FR 80186 (December 31, 2002). Specifically, EPA required that emissions of "any regulated NSR pollutant" be subject to PSD requirements when emitted in specified quantities by sources and defined that

[20] "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects—Final Rule," 67 FR 80186 (December 31, 2002).

term to include pollutants regulated under certain CAA requirements, as well as "any pollutant that otherwise is subject to regulation under the [CAA]." 52.166(b)(49)(iv). EPA made clear in the preamble to the NSR Reform rule that PSD applicability was automatically updating. 67 FR at 80240.

As discussed elsewhere, it is these provisions, in conjunction with the LDVR (which subjects GHGs to regulation), that have triggered PSD applicability for GHG-emitting sources. The Tailoring Rule did not do so.

In fact, rather than establishing the requirement that PSD apply to GHG-emitting sources, the Tailoring Rule alleviated that requirement for most of the GHG-emitting sources that would otherwise be affected. The Tailoring Rule did so by providing that the only GHGs "subject to regulation" are those that are emitted by sources at or above specified thresholds (the Tailoring Rule thresholds).[21] In order to identify the thresholds, it was necessary for EPA to identify (i) the pollutant that comprises GHGs and (ii) how to account for that pollutant. However, the Tailoring Rule made clear that, on the one hand, the states may either: (a) Adopt different requirements for the thresholds, as long as those requirements were equivalent to the requirements of the thresholds promulgated by EPA; or (b) apply lower thresholds, as long as the states accompanied them with an assurance of adequate resources. Thus, had EPA never promulgated the Tailoring Rule, PSD would nevertheless apply to GHG-emitting sources; it would apply to all GHG-emitting sources at or above the 100/250-tpy threshold; and it would not be limited to GHG-emitting sources at or above the Tailoring Rule thresholds.

The SIP call that EPA is finalizing in this action is based on the failure of the SIPs to apply PSD to GHG-emitting sources, and that failure, in turn, is rooted in the failure of the SIPs to apply PSD to newly regulated pollutants on an automatically updating basis. The states' corrective SIP revision in response to the SIP call that applies PSD to GHG-emitting sources may apply the Tailoring Rule thresholds (or lower thresholds, depending, as just noted, on the state's resources), but, again, the current failure of the SIPs to include the Tailoring Rule thresholds is not the basis for the SIP call.

As a result, the process of 40 CFR 51.166(a)(6)(i), with its 3-year deadline, does not apply in place of the SIP call, as the commenter suggests. 40 CFR 51.166(a)(6)(i) provides, "Any State required to revise its implementation plan *by reason of an amendment to this section*, including any amendment adopted simultaneously with this paragraph (a)(6)(i), shall adopt and submit such plan revision to the Administrator for approval no later than three years after such amendment is published in the Federal Register." (Emphasis added.) This provision was added as part of the 2002 rulemaking revising the NSR program that we call the NSR Reform rule. *See* 67 FR 80186 (December 31, 2002). In addition, as noted already, the requirement that SIP PSD programs automatically update is a longstanding requirement, and EPA most recently reiterated that requirement, with revised terminology, in the NSR Reform rule as well. There, EPA revised the definition of major stationary source—the entity to which PSD applies—to mean a source that emits the requisite amount of "any regulated NSR pollutant," 40 CFR 51.166(b)(1)(i)(a), 67 FR at 80239–40; and EPA defined that term to include, among other things, "any air pollutant that otherwise is subject to regulation under the Act." 40 CFR 51.166(b)(49)(iv). EPA added in the preamble, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS applicable to a previously unregulated pollutant." 67 FR at 80240. After EPA promulgated the NSR Reform rule, many states submitted SIP revisions that incorporated the revised terminology, and in that manner, assured that their PSD programs automatically updated. Of course, the states subject to this SIP call have had the opportunity to submit SIP revisions since December 31, 2002—almost 8 years ago—to conform to the NSR Reform rule and thereby assure that their PSD programs are automatically updating. 67 FR at 80241. Many of the affected states did not do so, and that has led to the failure of the SIPs to apply PSD to GHGs, which is the substantial inadequacy that justifies the SIP call.

It is true that the SIP call requires a corrective SIP revision for states to apply PSD to GHG-emitting sources (and does not mandate that states revise their PSD applicability provisions to incorporate an automatic updating mechanism). In doing so, states may adopt the Tailoring Rule thresholds—including certain features such as the definition of GHGs—or may adopt differently phrased requirements or lower thresholds, as explained earlier in this preamble, but this aspect of the state's obligation does not, as commenters would have it, somehow take the requirement out of the SIP call process and place it in the 40 CFR 51.166(a)(i) process.

In addition, it is clear that the commenters are incorrect in their assertion that PSD applicability for GHGs must be delayed for the 3-year SIP submission period under 40 CFR 51.166(a)(i) and in their related assertion that EPA's efforts to apply the Tailoring Rule amount to unlawful retroactive application of regulatory requirements. The 3–year period does not apply to this requirement that PSD apply to GHG-emitting sources, as discussed earlier in this preamble; even more, by operation of the CAA, in conjunction with the LDVR, PSD applies to GHGs beginning on January 2, 2011, with or without the Tailoring Rule. Again, the Tailoring Rule simply adds thresholds to limit that applicability.[22]

For similar reasons, commenters are also incorrect in arguing that CAA section 110(a)(1), which requires a SIP submittal "within 3 years (or such shorter period as the Administrator may prescribe)," supports a 3-year period for the SIPs required under the SIP call and precludes PSD applicability during that period. Nothing in that provision overrides the operation of the CAA provisions, discussed elsewhere, which automatically apply PSD to newly regulated pollutants, and EPA's regulations that codify those provisions, in conjunction with the LDVR, to mean that GHG-emitting sources are subject to PSD as of January 2, 2011. Moreover, this provision cannot override the SIP call provisions, which apply for reasons stated elsewhere. In any event, this provision does not mandate a 3-year period for SIP submittal; rather, the provision, by its terms, authorizes EPA to prescribe a shorter period.

Another commenter is mistaken in making the somewhat similar assertion that "with regard to the SIP revisions required to accommodate any new regulated pollutant under the PSD program Section 166(b) of the Act allows the States 21 months. Any SIP

[21] More broadly, the Tailoring Rule indicated that the Tailoring Rule thresholds could be treated as incorporated in any of several of the components of the regulatory definition of "major stationary source." 75 FR at 31582.

[22] Nor does any provision in 40 CFR 51.166 mandate that states adopt the Tailoring Rule thresholds. Again, the Tailoring Rule thresholds are limitations on PSD applicability and are not minimum PSD requirements that states must adopt under CAA section 110(a) or the PSD provisions. Rather, a state may, if it chooses, retain the lower 100/250-tpy thresholds, apply PSD to a larger universe of GHG-emitting sources, and increase its resources for PSD permitting accordingly. Thus, the 3-year period in 40 CFR 51.166(a)(1) does not apply to the SIP revisions that adopt the Tailoring Rule thresholds.

Call before the States have failed to meet that deadline is illegally premature." The commenter is mistaken because (i) CAA section 166(b) by its terms applies only in the case of certain pollutants listed in CAA section 166(a) and pollutants for which NAAQS are promulgated and therefore does not apply to GHGs, and (ii) the D.C. Circuit held, in *Alabama Power* v. *Costle,* that the 21-month period does not toll the applicability of PSD requirements to pollutants, that is, that PSD requirements apply to pollutants during that period. 636 F.2d 323,406 (1980).

Finally, the commenter erred in asserting that in the proposed SIP call, "EPA characterized the Tailoring Rule as creating a PSD permit moratorium," that EPA has no authority to impose such a moratorium, and therefore that no such moratorium can apply in the affected states. On the contrary, neither in the proposed SIP call nor anywhere else has EPA "characterized the Tailoring Rule as creating a PSD permit moratorium." The commenter has not—nor could it—provide any citations to that effect. It is certainly true that EPA does not have authority to impose a blanket construction moratorium, and EPA has never claimed to the contrary. What EPA did say in the proposed SIP call is that GHG-emitting sources in states without authority to issue permits to those sources will face *de facto* obstacles to construction or modification. For example, EPA said that in such states, "absent further action, GHG sources that will be required to obtain a PSD permit for construction or modification on and after January 2, 2011, will be unable to obtain that permit and therefore may be unable to proceed with planned construction or modification * * *." 75 FR at 53894/3. This statement remains valid.

(III) Timing of finding of substantial inadequacy

Some industry commenters also stated that EPA "cannot make [a finding of substantial inadequacy] until the January 2, 2011, date on which PSD permitting requirements for GHGs will [first] apply." They explained that CAA section 110(k)(5) "does not describe the event of a 'substantial inadequacy' as an anticipated future occurrence, instead stating that EPA may issue a SIP call to any state with a SIP that 'is substantially inadequate' to comply with CAA requirements. The CAA does not provide EPA with a basis for * * * issu[ing] a SIP call because the agency expects to find that some states' SIP will become 'substantially inadequate' at some later time." (Emphasis in original.)

We disagree with commenters' reading of CAA section 110(k)(5). EPA is justified in finding that under CAA section 110(k)(5), each of the affected SIPs "is substantially inadequate" to comply with CAA requirements at the present time.

In brief, under each of these SIPs' current provisions, they will not apply PSD to GHG-emitting sources when, in only one month's time, those sources will be subject to PSD under the CAA. Some lead time generally is required to revise SIPs. As a result, there is a meaningful risk in each of these states that, beginning in one month's time, sources that are subject to PSD will not have a permitting authority available to process their permit applications and therefore will face delays in their construction and modification projects. This situation is not in keeping with one of the purposes of PSD, which is to protect the environment in a manner that reduces potential negative repercussions to economic growth. Consistent with that purpose, we interpret CAA section 110(k)(5) to authorize a finding at this time that the SIPs are substantially inadequate to comply with CAA requirements.

Specifically, as discussed earlier in this preamble, under the terms of the CAA PSD applicability provisions, large sources become subject to PSD as soon as the pollutants they emit become subject to regulation. CAA section 165(a)(1), 169(1). Accordingly, again as discussed earlier in this preamble, (i) the CAA requires that states assure that the PSD applicability provisions in their SIPs are automatically updating, (ii) EPA's longstanding regulations incorporate this requirement, and (iii) EPA reiterated this regulatory requirement for automatic updating in the 2002 NSR Reform rule (*see* 67 FR 80186, December 31, 2002), using different terminology, and required states to submit SIP revisions incorporating the requirement within 3 years. The requirement for automatic updating is one of the foundations for the requirement that the SIPs affected by this action apply PSD to GHG-emitting sources as of January 2, 2011.

These SIPs, under their present provisions, do not do so, and thus they will not apply PSD to GHG-emitting sources by January 2, 2011. If they do not, then no permitting authority will be available by January 2, 2011, and sources may face delays in obtaining permits to construct or modify. To assure the availability of a permitting authority, the SIPs must be revised and approved by EPA, or else a FIP must be put in place. This process requires some time, but again, until it is completed, sources face those delays.

Delays in construction or modification solely due to the lack of a permitting authority to process applications are not consonant with the purposes of the PSD provisions. One purpose of the PSD provisions is to protect public health and the environment consistent with the promotion of economic development. *See* CAA section 160. In particular, CAA section 160(3) identifies as some of the purposes of PSD, "to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources."

The requirements of CAA section 110(k)(5), as they apply to PSD SIPs, should be interpreted in that light. The DC Circuit has held that the terms of the PSD provisions should be interpreted with the PSD purposes in mind, *New York* v. *EPA,* 413 F.3d 3, 23(DC Cir.), *rehearing en banc den.,* 431 F.3d 801 (2005), and the same should be true of CAA section 110(k)(5) as applied to PSD requirements. Therefore, whether a SIP "is substantially inadequate" under CAA section 110(k)(5) should be interpreted in light of the purposes of the PSD provisions, including the need to insure that economic growth will occur consistent with environmental goals.

In this light, EPA concludes that each affected SIP "is substantially inadequate" at this time because it does not apply PSD to GHG-emitting sources, and only a month remains before those sources will become subject to the requirement to obtain a permit for their GHG emissions when they construct or modify. In light of the lead time required to revise the SIP or put in place a FIP, there is a substantial risk that no permitting authority will be in place to process permit applications, which would result in delays in PSD permit issuance. As a result, it is sensible and in keeping with the purposes of the PSD provisions to issue the SIP call at this time and thereby set in motion the process to establish a permitting authority. As noted elsewhere, with this approach, almost all of the affected states will have a permitting authority in place by January 2, 2011, or soon enough thereafter that any delay will not have substantial adverse effects on sources in the state.

In contrast, under the commenter's interpretation, EPA would be obliged to wait until January 2, 2011, when PSD begins to apply to GHG-emitting sources, before EPA could require corrective action. Under that approach, it is much more likely that sources in some states would find themselves subject to delays before they could

construct or modify, a result at odds with the purposes of the PSD provisions.

b. Deadline

(i) Final Action

This action finalizes our proposal to establish for each state subject to the SIP call a deadline of 12 months from the date of the final SIP call to submit its corrective SIP revision, except that if the state informed EPA that it would not object to a specified shorter deadline—as short as 3 weeks from the date of this final action—then EPA would establish that shorter period as the SIP deadline.

This 3-week-to-12-month time deadline, although expedited, meets the CAA section 110(k)(5) requirement of a "reasonable deadline[]." The term "reasonable" as it appears in that provision is not defined. Accordingly, it should be given its everyday meaning. The dictionary definition of the word "reasonable" is "fair and sensible," "based on good sense," or "as much as is appropriate or fair." *Oxford American College Dictionary* 1138 (2d ed. 2007). Thus, a reasonable deadline is a time period that is sensible or logical, and that in turn depends on the facts and circumstances. Those facts and circumstances include (i) The SIP development and submission process, (ii) the preference of the state, and (iii) the imperative to minimize the period when sources will be subject to PSD but will not have available a PSD permitting authority to act on their permit application and therefore would be unable to construct or modify.

First, as to the SIP development process, the 12-month outside time limit is reasonable because it is consistent with the time period required for SIP revisions in at least one previous SIP call that EPA issued, the NOx SIP Call.[23] Moreover, a large number of states have indicated to EPA that they expect to submit their GHG SIP revisions within 12 months. These states include some that are the subject of today's SIP call action and others that already have PSD programs that apply to GHG-emitting sources and are submitting SIP revisions to incorporate the Tailoring Rule thresholds.[24]

At the state's election, the deadline may be shorter than 12 months. We recognize that this period is expedited in light of the time involved in most SIP development and submission processes. In particular, we recognize that some states may need to undertake full-blown rulemaking actions, which often take a long time to complete, and we acknowledge that some states may need to change their statutory provisions, which may take even longer. Even so, we believe that under the circumstances present here, states may decide that a deadline shorter than 12 months is reasonable in light of emergency or other streamlined processes that may be used to significantly expedite action. The reasonableness of the shorter deadline is further supported because as a practical matter, for the most part, the affected states were given notice as early as August 12, 2010, when the proposed SIP call was signed and posted to the web (75 FR 53907), that they would likely need to submit, on a short timeframe, a SIP revision. Thus, these states will have had some three-and-a-half months prior to the final SIP call date to have begun work on their SIP revisions. Indeed, many states have taken advantage of that time and have already begun to develop their SIP submissions, some have already submitted them in draft form for parallel processing, and some have submitted them in final form. Although this is a matter of state process, we are prepared to work with the states on our end to develop expedited methods for developing, processing, and submitting SIP revisions.

Second, the flexibility in EPA's structure for deadlines, including the opportunity for states to select shorter deadlines, is reasonable because it is based on the state's preference. This is consistent with the federalism principles that underlie the SIP call process and the SIP system as a whole. That is, in the first instance, it is to the state to whom falls the responsibility of developing pollution controls through an implementation plan. Here, the deadline for the state to submit the plan can be as long as 1 year or as little as 3 weeks, at the election of the state. In fact, almost all of the states have articulated a preference for a deadline, and among them, they are choosing—or at least not objecting to—deadlines that range from 3 weeks to 12 months. An earlier deadline under which the state must operate acts as a burden on the state, but if the state has chosen that, and thereby has declined the option of a longer deadline (*e.g.*, 12 months), then the earlier deadline should be considered reasonable.

Third, the need to give the states the opportunity to minimize the period when sources may be unable to construct or modify due to the lack of regulatory authority to act on their permit applications is an essential consideration that supports the reasonableness of EPA's schedule. A shorter period for SIP submittal means that either the state, through the SIP revision that it submits on an expedited basis in light of this tight schedule, or EPA, through a FIP, will become the permitting authority sooner and will then be able to act on permit applications and issue permits that allow new construction and modification of existing plants. As noted earlier in this preamble, the purposes of the PSD provisions include both the protection of public health and the environment as well as the promotion of economic development. *See, e.g.*, CAA section 160(3). The D.C. Circuit has held that the terms of the PSD provisions should be interpreted with these goals in mind. *New York* v. *EPA*, 413 F.3d 3, 23 (DC Cir.), *rehearing en banc den.*, 431 F.3d 801 (2005). Accordingly, determining a "reasonable deadline[]" for the submittal of a PSD SIP revision should account for the need to protect economic development, consistent with protecting clean air resources, by assuring the availability of a permitting authority to process permit applications.

(ii) Response to comments

Some industry commenters objected to this deadline on several grounds. Their first objection is that (i) EPA contends that EPA has the authority to impose a construction ban, (ii) in fact, EPA does not have that authority, but (iii) EPA is "using the phantom threat of a construction ban to intimidate states into immediately accepting GHG regulation. * * *"

We disagree with the commenters' objection. It is untrue that EPA somehow interprets the CAA to authorize EPA to apply a construction ban as a type of sanction to apply when a pollutant becomes subject to regulation, or that EPA has stated that it interprets the CAA that way. Rather, as discussed earlier in this preamble, it is by operation of the CAA provisions that as of January 2, 2011, large GHG-emitting sources will be required to obtain permits to construct or modify. If these sources are located in a state with an approved PSD program that does not apply to GHGs, then no permitting authority may be available and, as a result, the sources may face delays in undertaking construction or modification projects. EPA is not seeking to intimidate states; rather, we wish to make sure states are fully aware

[23] "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule." 63 FR 57356 (October 27, 1998).

[24] Declaration of Regina McCarthy, *Coalition for Responsible Regulation* v. *EPA*, DC Cir. No. 09–1322 (and consolidated cases) (McCarthy Declaration), Attachment 1, Tables 2–3, in the docket for this rulemaking.

of this potential for delays in their sources' ability to construct or modify, and we do wish to give states the option to allow an early FIP that will eliminate that potential for delays. As noted earlier in this preamble, some states are selecting an early SIP submittal deadline in order to allow an early FIP that will eliminate that potential, while other states are selecting a later SIP submittal deadline but are confident that their sources will not suffer damaging delays in the interim.

Commenters also state that even with a SIP call, states should be given more than 12 months to submit their corrective SIP revisions. The commenters explain that a 12-month period is "much too brief" in light of the need for notice and comment at the state level in developing a SIP revision. Some commenters claim that the "'default' timeframe for allowing states to revise their SIPs due to a 'substantial inadequacy' with the SIPs' ability to maintain NAAQS for a conventional pollutant is 18 months." Some commenters state that "[b]ased on EPA's SIP call precedent, a development period of up to three years would be appropriate." Commenters also note that the legality of various aspects of the Tailoring Rule, including the revisions made by that rule to 40 CFR 51.166, has been challenged in the U.S. Court of Appeals for the DC Circuit, and the outcome of that litigation will not be known for some time. In such a setting, commenters state, even a December 2011 SIP call deadline would be inconsistent with CAA section 110(k)(5) by not affording states a "reasonable" time to accomplish all that they would need to do in order to address the Tailoring Rule requirements.

Another commenter concludes that "[i]t was EPA's choice (and EPA's legal interpretation of the CAA) to require states to regulate GHGs under the states' PSD and Title V permit programs; the agency must now give states a 'reasonable' period of time to comply free from onerous consequences if the states do not act within one month."

Other commenters also express concern that a deadline of 3 weeks cannot be considered "reasonable." One state commenter (Kentucky) observes that the 3-week deadline departs from the "normal SIP Call process" and is "impossibly aggressive for many agencies," and the commenter recommends "a later date to allow states the ability to properly and adequately prepare to implement the new standards as has been done historically with every SIP Call in the past." Another state commenter (Arkansas) notes that its standard rulemaking process is lengthy in comparison to the 3-week-to-12-month deadline EPA proposed and weighs against calling EPA's deadline reasonable.

According to a state commenter (Arkansas), "the need to keep state PSD permitting authority intact in order to act on permit applications would not be an issue but for the conglomeration of rules and timelines put into place by EPA to implement the regulation of GHG-emitting sources." Responding to the proposed SIP call, Arkansas states that it does not object to the shortest SIP deadline of 3 weeks after the SIP call, in light of the precarious position that Arkansas sources would be in without the speedy issuance of a FIP. However, state officials remark that the deadline is not a preference but instead is more aptly described as a necessity under the circumstances created by EPA.

With respect to the longer end of the schedule, as we explained earlier in this preamble, we consider the 12-month period to be adequate. We provided 12 months for the $NO_X$ SIP Call rulemaking, and states were generally able to comply within that timeframe. Our information indicates that in virtually all cases, the affected states have begun to develop their SIP revisions already, and so far, almost all of the states are on track to submit their SIP revisions by December 1, 2011, even though many have indicated they do not object to an earlier deadline.

Specifically, EPA regional and headquarters officials have conferred extensively with state officials concerning the states' progress and plans.[25] Based on the states' 30-day letters and other communications with the states, 13 states operate PSD programs under SIPs that EPA identifies as lacking the authority to issue PSD permits for GHG emissions starting January 2, 2011. EPA expects that, of these 13 states (encompassing 15 state and local permitting agencies), 7 states (8 state and local permitting agencies) will be subject to a FIP by January 2, 2011. One state, Texas, has not indicated a preference for a SIP submittal deadline—and so will receive the default deadline of December 1, 2011—and has said that it does not intend to submit a SIP revision. EPA specifically requested of states for which we proposed the SIP call that they inform EPA of the period of time that they would accept as the deadline for submittal of their SIP revisions in response to a SIP call. *See* 75 FR at 53901. Accordingly, EPA is planning additional actions to ensure that GHG sources in Texas, as in every other state in the country, have available a permitting authority to process their permit applications as of January 2, 2011 (or, at the state's election, a short period thereafter that the state has said will not impede the ability of sources to obtain permits in a timely way).

With respect to the shorter end of the timetable, EPA recognizes commenters' concerns about the 3-week period that states may elect but considers this period reasonable, under the particular circumstances presented, as discussed earlier in this preamble, including the facts that the states still retain some discretion in selecting that period and that at this point in time, that 3-week period is what some states may need to protect their sources from the potential delays due to the lack of a permitting authority, and any longer period would expose their sources to such delays.

A commenter's suggestion that EPA grant states "a 'reasonable' period of time to comply, free from onerous consequences if the states do not act within one month," is not tenable. A longer period of time would not solve the problem that, absent the establishment of EPA or state authority to issue GHG PSD permits by January 2, 2011, some sources in some states may experience obstacles to obtaining PSD permits authorizing construction or modification activities.

As for the commenters' concerns that it is EPA's actions that have led to the timing issues, our response is that the timing issues arise because, on the one hand, the CAA requires that PSD applies to GHG-emitting sources as soon as EPA subjects GHGs to regulation, but, on the other hand, the affected states' SIPs do not automatically apply PSD to GHG-emitting sources. As a result of the lack of automatic PSD applicability in those states, no permitting authority is available to issue permits to the GHG-emitting sources until some rulemaking action—whether it is a SIP or a FIP—occurs that applies PSD to GHG-

[25] In addition, the National Association of Clean Air Agencies (NACAA) recently reviewed the 30-day letters from the states and accurately summarized them in a report, "GHG Permitting Programs Ready To Go By January 2nd" (October 28, 2010). This report is included as Attachment 3 to the McCarthy Declaration. This report can be found in the docket for this rulemaking. In a few cases, the information EPA collected is more recent than what was available to NACAA because EPA's information is based not just on the 30-day letters but also on conferring with the states. NACAA summarized its conclusions as follows: "Excepting only one, programs in all states [for which EPA proposed a SIP Call] have indicated that they will either revise their PSD rules by January 2, 2011 or very shortly thereafter, or accept a Federal Implementation Plan (FIP) that will give EPA authority to issue the GHG portion of PSD permits until state rules are revised. This provides that sources required to apply PSD controls to their GHG emissions will be able to obtain the necessary permits and avoid construction delays."

emitting sources in that state and thereby establishes a permitting authority. This timing issue does not arise in the majority of states, because their SIPs do automatically apply to GHG-emitting sources as soon as EPA subjects GHGs to regulation.

In this regard, we reiterate that EPA's actions in promulgating the LDVR, which, in conjunction with the operation of the CAA, resulted in PSD applicability for GHGs, were fully consistent with the CAA. In addition, EPA has endeavored to provide as much time as possible to establish a permitting authority in the affected states by expeditiously implementing PSD applicability, including the Tailoring Rule and this rulemaking.

More specifically, with respect to the timing for the LDVR, EPA promulgated that rule by notice dated May 7, 2010, and explained the timing as follows:

> EPA is issuing these final GHG standards for light-duty vehicles as part of its efforts to expeditiously respond to the Supreme Court's nearly three year old ruling in *Massachusetts* v. *EPA*, 549 U.S. 497 (2007). In that case, the Court held that greenhouse gases fit within the definition of air pollutant in the Clean Air Act, and that EPA is therefore compelled to respond to the rulemaking petition under section 202(a) by determining whether or not emissions from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. The Court further ruled that, in making these decisions, the EPA Administrator is required to follow the language of section 202(a) of the CAA. The Court stated that under section 202(a), "[i]f EPA makes [the endangerment and cause or contribute findings], the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant." 549 U.S. at 534. As discussed above, EPA has made the two findings on contribution and endangerment. 74 FR 66496 (December 15, 2009). Thus, EPA is required to issue standards applicable to emissions of this air pollutant from new motor vehicles.
>
> The Court properly noted that EPA retained "significant latitude" as to the "timing * * * and coordination of its regulations with those of other agencies" (*id.*). However it has now been nearly three years since the Court issued its opinion, and the time for delay has passed.

75 FR at 25402/1. EPA went on to explain other reasons why it was necessary to promulgate the LDVR at that time. *Id.* at 25402/1–2.

The LDVR, in conjunction with the operation of the CAA, resulted in the January 2, 2011, "take effect" date that is triggering PSD applicability for GHG-emitting sources. Less than one month after the LDVR, by notice dated June 3, 2010, EPA finalized the Tailoring Rule, and in that action, EPA requested states to advise EPA by letter within 60 days, or by August 2, 2010, whether their SIP PSD program applied to GHG-emitting sources. These letters helped indicate the number of states that lacked authority to apply PSD to GHG-emitting sources. Less than one month later, on September 2, 2010, EPA published the proposed SIP call and proposed FIP. EPA is now taking final action on the SIP call only 3 months after that.

As a result of EPA's expedited actions, states will have some opportunity to develop SIP revisions by, or soon after, the January 2, 2011, date. Some states began to develop their SIP revisions promptly following the SIP call proposal. As a result, they in fact are able to revise their SIPs within a very short timeframe. For example, of the states and localities for which EPA proposed the SIP call, EPA currently expects one state to have an approved SIP revision by January 2, 2011, and two more states (three local permitting agencies) to have one by February 1, 2011. Other jurisdictions have SIP development processes that generally take longer but can still be accomplished well within the 12-month period. According to these particular states, a deadline that is later than January 2, 2011, does not pose a problem because they do not expect their sources to require permits from January 2, 2011, until their deadline. We believe that taken as a group, the affected states and local agencies have selected a range of deadlines that suit their individual circumstances and, we think, that evidences the reasonableness of the deadlines we are establishing.

We note, finally, that our approach results in reasonable deadlines in light of the fact that states that select the FIP approach may immediately seek a delegation of authority to implement the FIP. Therefore, as a practical matter, there is little difference between processing GHG PSD permit applications under the authority of the state's own SIP and processing such applications under the authority of a FIP. This is because if a state were to accept delegation, the state would be required to implement EPA regulations, including EPA regulatory requirements concerning BACT, but in many cases, these EPA regulatory BACT requirements are the same as BACT requirements in the state's approved SIP. In addition, the state would inherently have a great deal of discretion in PSD permitting decisions because BACT determinations are made on a case-by-case basis that entails making judgments about a number of factors.

2. State-Specific Actions

In this section of the preamble, we summarize our basis for action for each of the states for which we are issuing a finding of substantial inadequacy and issuing a SIP call, as well as our basis for not issuing a finding or SIP call for any state for which we proposed to do so. We present a more detailed discussion in a Supplemental Information Document, which can be found in the docket for this rulemaking. The Supplemental Information Document includes all letters received from the affected states in response to our proposed action, as well as additional material that we collected and considered for this final action.

In table IV–2, "Summary of State-specific Actions in Finalizing SIP Call, by State," we identify the states and areas affected in this final rule.

TABLE IV–2—SUMMARY OF STATE-SPECIFIC ACTIONS IN FINALIZING SIP CALL, BY STATE

| State (or area) | Final SIP call status | Basis for finding of substantial inadequacy | SIP submittal deadline (MM/DD/YY) |
|---|---|---|---|
| Alaska | No SIP call | Not applicable. Already made SIP submittal to EPA. | Not applicable. |
| Arizona: Pinal County | SIP call issued | PSD applicability provision identifies specific pollutants but does not include GHG. | 12/22/10. |
| Arizona: Rest of State (Excludes Maricopa County, Pima County, and Indian Country). | SIP call issued | PSD applicability provision identifies specific pollutants but does not include GHG. | 12/22/10. |

TABLE IV–2—SUMMARY OF STATE-SPECIFIC ACTIONS IN FINALIZING SIP CALL, BY STATE—Continued

| State (or area) | Final SIP call status | Basis for finding of substantial inadequacy | SIP submittal deadline (MM/DD/YY) |
|---|---|---|---|
| Arkansas | SIP call issued | PSD applicability provision incorporates by reference 40 CFR 52.21, but it does not include GHG because it does not allow automatic updating. | 12/22/10. |
| California: Sacramento Metropolitan AQMD. | SIP call issued | PSD applicability provision identifies specific pollutants but does not include GHG. | 01/31/11. |
| Connecticut | SIP call issued | PSD applicability provision explicitly exempts "carbon dioxide.". | 03/01/11. |
| Florida | SIP call issued | PSD applicability provision identifies specific pollutants but does not include GHG. | 12/22/10. |
| Idaho | SIP call issued | PSD applicability provision generally incorporates by reference 40 CFR 52.21, but it does not include GHG because it does not allow automatically updating. | 12/22/10. |
| Kansas | SIP call issued | PSD applicability provision incorporates by reference 40 CFR 52.21, but it does not include GHG because it does not allow automatic updating. | 12/22/10. |
| Kentucky: Louisville Metro Air Pollution Control District. | SIP call issued | PSD applicability provision incorporates by reference 40 CFR 52.21, but it does not include GHG because it does not allow automatic updating. | 01/01/11. |
| Kentucky: Rest of State (Excludes Louisville Metro Air Pollution Control District). | SIP call issued | PSD applicability provision incorporates by reference 40 CFR 52.21, but it does not include GHG because it does not allow automatic updating. | 03/31/11. |
| Nebraska | SIP call issued | PSD requirements lack clear authority to regulate GHG | 03/01/11. |
| Nevada: Clark County | SIP call issued | PSD applicability provision identifies specific pollutants but does not include GHG. Local agency-effective rule recently submitted for SIP approval does not include GHG because it does not allow automatic updating. | 07/01/11. |
| Oregon | SIP call issued | PSD applicability provision identifies specific pollutants but does not include GHG. | 12/22/10. |
| Texas | SIP call issued | PSD applicability provision incorporates by reference 40 CFR 52.21, but it does not include GHG because it does not allow automatic updating. | 12/01/11. |
| Wyoming | SIP call issued | State law prevents the state's regulation of GHG | 12/22/10. |

*C. Requirements for Corrective SIP Revision*

1. Application of PSD Program to GHG-Emitting Sources

Because EPA is issuing a finding of substantial inadequacy and issuing a SIP call for each state whose SIP fails to apply the PSD program to GHG-emitting sources, EPA is requiring the state to correct its SIP by submitting a SIP revision that applies PSD to GHG-emitting sources.

For those states whose PSD applicability provisions apply PSD to listed air pollutants, the state may accomplish this correction in one of at least two different ways. First, the state may revise its PSD applicability provisions so that, instead of applying PSD to sources of individually listed pollutants, the provisions apply PSD to sources that emit any "regulated NSR pollutant." We recommend that states follow this "regulated NSR pollutant" approach. It is consistent with our 2002 NSR Reform rule. *See* 67 FR at 80240.

Moreover, the "regulated NSR pollutant" approach would more readily incorporate, for state law purposes, the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and may develop further through additional rulemaking. As explained in the Tailoring Rule, incorporation of this phase-in approach for state law purposes (including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule and additional steps of the phase-in that EPA may promulgate in the future) can be most readily accomplished through state interpretation of the "subject to regulation" prong of the definition of "regulated NSR pollutant."

There are other advantages to a state that adopts EPA's definition of "regulated NSR pollutant." Doing so would resolve any issues about whether the state has authority to issue permits for sources of pollutants that EPA may subject to regulation for the first time in the future. In addition, the SIP would apply PSD to sources emitting $PM_{2.5}$.[26] Finally, state adoption of EPA's definition of "regulated NSR pollutant" would allow the SIP to mirror EPA regulations and the SIPs of most states, which would promote consistency and ease of administration. EPA's reasons for recommending that states follow the "regulated NSR pollutant" approach are explained in more detail in the proposal for this action (*see* 75 FR at 53903).

As an alternative to the "regulated NSR pollutant" approach just described, the state may retain its approach of applying PSD to sources of individually listed pollutants but submit a SIP revision that includes GHGs on that list of pollutants. If the state takes this approach, it must either incorporate the Tailoring Rule thresholds or demonstrate adequate resources to administer lower thresholds. If a state chooses this approach, we will approve the SIP revision on the basis that the revision is SIP-strengthening, as we stated in the proposal (*see* 75 FR at 53902).

One state commenter (Connecticut) stated its understanding that "a SIP-

[26] Following a 1997 review of our NAAQS for particulate matter, we promulgated NAAQS for fine particles ($PM_{2.5}$). We then designated all areas of the country as "attainment," "nonattainment," or unclassifiable for the $PM_{2.5}$ standards, which became effective in April 2005. Pursuant to the CAA, states are obliged to revise their PSD regulations to include the new $PM_{2.5}$ standards. However, some SIP PSD programs do not apply to $PM_{2.5}$-emitting sources. To effect a smooth transition, EPA allowed states to use $PM_{10}$ as a surrogate for $PM_{2.5}$. EPA is not at present issuing a finding of substantial inadequacy under CAA section 110(k)(5) for such PSD programs.

strengthening approval is a form of limited approval that EPA uses for SIP submissions that meet only some of EPA's requirements, but for which there is no portion that may be separated out and fully approved or fully disapproved."

The commenter believes its previously SIP-approved PSD program should be fully approvable, once the state revises its regulations to include GHGs in the list of pollutants subject to its PSD program, to add applicability thresholds for GHGs, and to add GHGs to the pollutants for which a BACT review is required. This state commenter points out what it sees as a contradiction if EPA approves such a SIP revision as merely a SIP-strengthening one. The contradiction is that in our proposal, according to the commenter, EPA "specifically notes that it is limiting the SIP Call to the failure to apply PSD to GHG-emitting sources, as distinguished from finding that a SIP is substantially inadequate." The state commenter (Connecticut) strongly encourages EPA to "reconsider this distinction in approving state PSD programs and to fully approve any state program that addresses GHGs as set out in the Tailoring Rule, regardless of the format the state uses to revise its SIP."

We appreciate this comment and welcome the opportunity to clarify what we mean by a "SIP-strengthening" approval in this case. This type of approval constitutes a full approval of the SIP revision because it meets the requirements of the SIP call to submit a corrective SIP revision that applies PSD to GHG-emitting sources. In this case, there is no limited or partial approval. However, because this SIP revision otherwise leaves the PSD applicability provision as it stands and does not revise that provision to automatically update to cover any pollutant newly subject to regulation, we term our approval SIP-strengthening.

Although we recommend that the states adopt the "regulated NSR pollutant" approach, we do not require it because that approach is not necessary to correct the substantial inadequacy—which is the failure of the PSD SIP to cover GHG sources—for which we are issuing the SIP call. Rather, that substantial inadequacy may be corrected more narrowly by listing GHGs. We note that CAA section 110(k)(5) provides that "[w]henever the Administrator finds" that a SIP is substantially inadequate to meet CAA requirements, the Administrator shall require a SIP revision. This provision, by its terms—specifically, the use of the term "[w]henever"—authorizes, but does not require, EPA to make the specified finding and does not impose any time constraints. As a result, EPA has discretion in determining whether and when to make the specified finding. *See New York Public Interest Research Group* v. *Whitman*, 321 F.3d 316, 330–31 (2d Cir. 2003) (opening phrase "Whenever the Administrator makes a determination" in CAA section 502(i)(1) grants EPA "discretion whether to make a determination"); *Her Majesty the Queen in Right of Ontario* v. *EPA*, 912 F.2d 1525, 1533 (DC Cir. 1990) ("whenever" in CAA section 115(a) "impl[ied] a degree of discretion" in whether EPA had to make a finding). Accordingly, in this case, EPA is authorized to decide whether to issue the finding of substantial inadequacy on the basis of the SIP's lack of automatic updating or the narrower basis of the SIP's failure to apply PSD to GHGs. EPA chose the narrower basis because it addresses the immediate problem and because even states that do not adopt the automatic updating approach may nevertheless promptly take action to apply PSD to new pollutants and thereby avoid the problem of gaps in permitting authority. We caution, however, that in this case, if the state adopts the narrower approach of applying PSD to GHGs instead of the broader approach of applying PSD to "regulated NSR pollutants" so that the SIP will be automatically updating, then the SIP will not include the term "subject to regulation" and therefore may not include any vehicle or "hook" for the state to adopt by interpretation the current and any future steps of the phase-in approach. As a result, the state may have to adopt and submit for EPA approval additional SIP revisions to incorporate the current and future steps of the phase-in approach.

For those states whose PSD applicability provisions apply PSD to regulated NSR pollutants, but whose SIPs or other state law limit that applicability to pollutants subject to regulation at or about the time the SIP provision was adopted by the state, the corrective SIP revision may accomplish the correction in one of several different ways. At a minimum, the state must revise its PSD applicability provision or other state law in such a manner that PSD applies to GHGs and either incorporates the Tailoring Rule thresholds or demonstrates adequate resources to administer lower thresholds. In addition, for many of the same reasons as discussed earlier in this preamble, we recommend—but do not require—that the state revise its PSD applicability provisions or other state law in such a manner that they (i) incorporate any future refinements to the Tailoring Rule thresholds that EPA may promulgate through its phase-in approach and (ii) will apply to any other pollutant that EPA newly subjects to regulation.

2. Definition and Calculation of Amount of GHGs

In its corrective SIP revision to apply PSD to GHGs, the state must define GHGs as a single pollutant that is the aggregate of the group of six gases: $CO_2$, $CH_4$, $N_2O$, HFCs, PFCs, and $SF_6$. As EPA stated in the Tailoring Rule, "[t]he final LDVR for GHGs specifies, in the rule's applicability provisions, the air pollutant subject to control as the aggregate group of the six GHGs * * *. Because it is this pollutant that is regulated under the LDVR, it is this pollutant to which PSD * * * appli[es]." 75 FR at 31528.

We proposed to require that the state define GHGs as just described, but we solicited comment on whether the state may adopt a different definition that is at least as stringent, and, if so, what such a definition might be. We cautioned that a definition that includes more gases than the six identified earlier in this preamble could prove to be less stringent in certain ways because such a definition could allow greater opportunities for a source of different gases to net out of PSD.

One industry commenter stated that no state should be permitted to unilaterally adopt a definition of GHG that includes more gases than set forth in the Tailoring Rule. EPA did not receive any comments on the proposed rulemaking in support of a different definition. Accordingly, EPA is finalizing this requirement as proposed.

3. Thresholds

A state, in revising its SIP to apply PSD to GHG-emitting sources, may adopt the Tailoring Rule phase-in approach into its SIP and thereby exclude sources below the Tailoring Rule thresholds. Alternatively, the state may adopt lower thresholds, but if it does so, it must show that it has "adequate personnel [and] funding * * * to carry out," that is, administer and implement, the PSD program with those lower thresholds, in accordance with CAA section 110(a)(2)(E)(i).

In the Tailoring Rule, EPA adopted a $CO_2e$ metric and use of short tons (as opposed to metric tons) for calculating GHG emissions in order to implement the higher thresholds. 75 FR 31530, 31532. If states wish to adopt the Tailoring Rule thresholds, they are not obligated to adopt the $CO_2e$ metric or use of short tons; however, the state

must assure that its approach is at least as stringent as under the Tailoring Rule, so that the state does not exclude more sources than under the Tailoring Rule. In addition, as noted earlier in this preamble, a state retains the authority to adopt lower thresholds than in the Tailoring Rule, but if it does, it must demonstrate that it has adequate resources.

*D. Response to Procedural and Other Comments*

1. Approved SIP PSD Programs That Apply to GHG Sources

Commenters state that, "[b]ased on its proposed rules, EPA has not fully considered the effect of its recent rulemakings on states and other jurisdictions that have indicated the 100 tpy $CO_2e$ and 250 tpy $CO_2e$ thresholds apply to determine if GHGs trigger PSD under their SIP rules." The commenters emphasize that "more than a dozen agencies implementing CAA permitting requirements will need to revise their regulations to incorporate EPA's tailored thresholds for GHGs and may be unable to do so before the Tailoring Rule's January 2, 2011, effective date. After that, these agencies could each be potentially overwhelmed by permit applications from many newly-covered emissions sources, essentially halting construction within the agencies' jurisdictions." The commenters observe that "[t]he Proposed SIP Call and Proposed FIP fail to discuss the economic consequences of this problem of the lower thresholds or to acknowledge that EPA has created this situation in the first instance." The commenters state that "EPA should be focused on addressing this problem rather than the comparatively minor issue of whether a state that will not face this onslaught can include GHG emission limits in a few permits each year." The commenters add that states face difficult implementation issues as they incorporate the elements of the Tailoring Rule into their SIPs.

These comments have no legal relevance to the SIP call because the states that are the focus of these commenters are not subject to the SIP call. We wish to note, however, that in fact, EPA is addressing expeditiously and comprehensively precisely the problems identified by the commenters. When EPA proposed the Tailoring Rule, EPA recognized and discussed at length these problems, that is, the fact that absent further action, in states with approved PSD programs that apply to GHG-emitting sources, those sources at the 100/250-tpy thresholds would be required to obtain preconstruction permits. We identified the problems that would result. We proposed to address the federal law element of this problem by narrowing our approval of those SIP PSD programs to only the part of them that applied to GHG-emitting sources at or above the Tailoring Rule thresholds. 74 FR at 55340–44.

Moreover, in the final Tailoring Rule, we remained mindful of this problem. We noted that, on the basis of teleconferences with states, we had decided to fashion the regulatory changes to implement the Tailoring Rule in a manner that would expedite state adoption of the Tailoring Rule thresholds. 75 FR at 31580–81. In addition, we asked states to tell us in letters to be submitted within 60 days after the Tailoring Rule how they planned to implement GHG permitting requirements and the Tailoring Rule, and we decided to delay final action on our proposal to narrow previous SIP approvals until we heard from the states. 75 FR at 31582. Having received and reviewed the states' responses, we intend to finalize the proposal in the Tailoring Rule to narrow EPA approval by January 2, 2011. That rule will assure that sources below the Tailoring Rule thresholds will not be subject to a *Federal* law requirement to obtain PSD permits due to their GHG emissions.

Finally, we have worked closely with the states on this issue. We have encouraged them to interpret, when possible, their PSD applicability provisions to include the Tailoring Rule thresholds, so that no further action on their part is necessary, and a significant number of states are able to do so. In addition, we have encouraged the states that need to revise their laws to incorporate the Tailoring Rule thresholds to do so as quickly as possible, so that as of January 2, 2011, or as soon as possible thereafter, sources below the Tailoring Rule thresholds will not be subject to a *state* law requirement to obtain PSD permits due to their GHG emissions. A large number of states have indicated that they will be able to take that step by January 2, 2011, on at least an emergency basis. Accordingly, we are in fact addressing quickly and comprehensively the problems presented by the fact that, absent further action, sources of GHGs below the Tailoring Rule thresholds may trigger PSD requirements as of January 2, 2011.[27]

[27] Commenters add that a similar problem arises under title V, that is, that in a number of states, absent further action, large numbers of small sources will become subject to title V for the first time on account of their GHG emissions. The commenters conclude, "[t]his further shows why it is both puzzling and troubling that EPA would consider a state's inability to issue a few permits with GHG limits in the first 6 months of 2011 a 'substantial inadequacy.'" EPA is also moving to address the title V issue commenters raise. EPA does not agree that deciding whether failure of the affected states' SIPs to apply PSD to GHG-emitting sources constitutes a substantial inadequacy depends on the relative importance of the problem represented by that failure compared with the importance of the problem represented by the need for states to incorporate the Tailoring Rule thresholds into their title V programs (which in any event are generally not SIP-related). For reasons discussed elsewhere in this preamble, the failure of the SIPs to apply PSD to GHG-emitting sources constitutes a substantial inadequacy to meet a CAA requirement under CAA section 110(k)(5), regardless of how it may stack up against other problems that EPA and the states may face in implementation of the CAA. Moreover, for the reasons noted here, the commenters' assertion that the scope of the problem represented by the affected states' failure to apply PSD to GHG-emitting sources is limited to "a few permits with GHG limits in the first 6 months of 2011" underestimates the number of permits involved.

2. Opportunity for Notice and Comment

Some industry commenters objected that because EPA provided "lengthy requests" for information to states for which it proposed the SIP call, and stated that it would use this information to determine which states should receive a SIP call, commenters would not have an opportunity to comment on that information, even though EPA would be relying on it for the basis of its final action. Commenters stated, "EPA is using the proposed rule to create the analysis to eventually support its SIP call," which is "inconsistent with both Section 307(d) procedures and the Administrative Procedure Act."

We disagree with the commenters. In the proposed rulemaking, EPA proposed to find that, as a legal matter, the PSD applicability provisions in the SIPs for 13 states did not apply to GHG-emitting sources, and EPA provided citations to, and discussion of, each affected state's SIP or other relevant state law provision, as well as the views of each state on the issue. This was adequate notice to give commenters the opportunity to comment. EPA solicited as much information as possible about each state's laws so that the final action would be fully in accordance with state law, and it is certainly conceivable that EPA might receive information that would form part of the basis of its final action. Indeed, that is the very purpose of notice-and-comment rulemaking. Even so, it is well established that the mere fact that EPA solicited comment and could receive some information that would form part of the basis of the final action does not mandate another round of notice-and-comment; otherwise, agencies would find themselves caught up in continual do-loops of notice-and-comment, with each comment period

yielding information that, as commenters would have it, would necessitate yet another comment period.

Commenters state that "[r]emarkably, EPA states that it will also directly promulgate a SIP call and FIP for any states it has inadvertently omitted from its notice of proposed rulemaking." Although the commenters do not elaborate upon this statement, they seem to imply that for EPA to finalize a finding of substantial inadequacy and a SIP call for such states would be improper because we did not provide adequate notice and opportunity for comment.

We disagree with the commenters. In the proposal, EPA listed in the "presumptive adequacy list" the states with approved SIP PSD programs for which EPA was not proposing a finding of substantial inadequacy and a SIP call, and we included citations to the relevant SIP provisions, but we went on to specifically solicit comment on whether each of those states merited a finding and SIP call. Moreover, EPA generally described the circumstances under which those states may merit a finding and SIP call. As a result, commenters had adequate notice that EPA could ultimately finalize a finding and SIP call for those states, and they could have commented if they had relevant views or information. As it turns out, we are finalizing a SIP call for only one state, Wyoming, for which we solicited comment. In response to our proposal's presumption of the adequacy of the Wyoming SIP with respect to applying PSD requirements to GHG sources, we received comments from the state's Governor, from the state's Department of Environmental Quality, and from industry and environmental commenters. Our proposal clearly provided adequate notice to these stakeholders so they could provide comment.[28]

3. Federal Implementation Plan

Some comments address the timing and other aspects of the FIP. Those comments are not relevant to this rule; therefore, EPA will not discuss them here but will discuss them in the final FIP rulemaking.

[28] In addition, commenters are mistaken in assuming that the reason why we did not propose to issue the SIP call for Wyoming was an "inadvertent[]" omission. We proposed or solicited comment based on the information available at the time.

## V. SIP Submittals

### *A. EPA Action: Findings of Failure To Submit and Promulgation of FIPs; Process for Action on Submitted SIPs*

1. Actions on SIP Submittals

For any of the 13 states subject to this action, if the state submits the required SIP revision by its submittal deadline, then EPA will not issue a finding of failure to submit or promulgate a FIP. Instead, EPA will take action on the SIP submittal as quickly as possible.

Because PSD applicability for certain GHG sources begins January 2, 2011, even states with proposed SIP revisions will not be able to issue federally approved PSD permits for construction or modification to affected sources until those revisions are approved. The affected source would be able to receive a state-issued permit, but the lack of a federally approved permit means that the source would not be in accordance with federal requirements concerning its GHG emissions if it constructed or modified. In light of this potential for burden on the affected sources, we intend to act on any SIP submittals that we receive as promptly as possible.

One key opportunity to expedite approval is that we will parallel-process the SIP submittal upon request of the state. Under this approach, the state sends us the draft of the SIP revision on which it plans to seek public comment at the state level, in accordance with CAA section 110(a)(2), and the state publishes its proposed approval of that draft SIP revision. While the state is taking public comment on its proposed SIP revision, we will initiate a separate public proceeding on our proposed approval of the SIP revision at the federal level. If, subsequently, the SIP revision that the state adopts and submits to EPA is substantially similar to the draft on which EPA solicited comment, then EPA will proceed to take final action on the SIP submittal and will not re-notice it for public comment. EPA has successfully employed the parallel-processing approach in past rulemakings, and we believe that employing it in this process could significantly shorten the time EPA needs to act on the SIP revision. Several states have already submitted drafts of their GHG-related SIP revisions for parallel processing and EPA has already proposed to approve those SIP revisions. These states include Alabama, Kentucky, Tennessee, North Carolina, and Mississippi.[29]

[29] Some commenters objected to, and others supported, parallel processing. We discuss those comments in the Supplemental Information Document, although we note that those comments are not relevant to any legal issues in this rulemaking.

2. Findings of Failure To Submit and Promulgation of FIPs

If the state does not meet its SIP submittal deadline, we intend to immediately issue a finding of failure to submit a required SIP submission under CAA section 110(c)(1)(A) and intend to immediately thereafter issue a FIP. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP submission.

3. Rescission of the FIP

After we have promulgated a FIP, it must remain in place until the state submits a SIP revision and we approve that SIP revision. CAA section 110(c)(1). Under the present circumstances, we will act on a SIP revision to apply the PSD program to GHG sources as quickly as possible and, upon request of the state, will parallel-process the SIP submittal in the manner described earlier in this preamble. If we approve such a SIP revision, we will, at the same time, rescind the FIP. We discussed this approach in our proposed FIP rulemaking.[30]

### *B. Streamlining the State Process for SIP Development and Submittal*

In the proposal, we recognized that the deadline we are giving states to submit their SIP revisions is expeditious, and we stated that we were prepared to work with the states to develop methods to streamline the state administrative process, although we recognized that the states remain fully in charge of their own state processes. We solicited recommendations during the comment period for ways that the states and we may streamline the state process for adopting and submitting these SIPs and to streamline or simplify what is required for the SIP submittal.

In the proposal, we noted as an example of possible streamlining the process as it concerns public hearing requirements. Many states require that the underlying state regulation that the state intends to develop into the SIP submittal undergo a public hearing. In addition, the CAA requires that the state provide a public hearing on the proposed SIP submittal, under CAA section 110(a)(2). In the proposal, EPA

[30] Proposed rule, "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan." 75 FR 53883 (September 2, 2010). The notice can be found in the docket for this rulemaking, at Document ID No. EPA–HQ–OAR–2010–0107–0045.

solicited public comment on whether it may, consistent with the CAA, accept the public hearing that the state holds on the underlying regulation as meeting the requirement for the hearing on the SIP submittal, as long as the state provides adequate public notice of the hearing. If so, EPA will not require a separate SIP hearing.

Two state commenters (Arkansas and Connecticut) favor this approach. One commenter (Connecticut) notes that because of the similarity in the required minimum public participation procedures, it has used this approach in the past and understands that it will significantly shorten the length of both its regulatory and SIP processing. The state commenter added that, in cases where it adopted a similar public hearing streamlining process as being proposed by EPA, it has been careful to provide adequate published notice concerning both the SIP revision and state regulatory adoption aspects of its public hearings,and has thus avoided unnecessary time and expenses incurred in published notices, waiting for comments, and holding public hearings.

We appreciate the commenters' observations. A state meets its CAA requirements as long as it holds a hearing on the SIP revision and gives adequate notice of that hearing. EPA believes that, under the CAA, the state has discretion to combine any other hearing required at the state level—including a hearing on the state law provision—with the hearing on the SIP revision and, again, as long as the state provides adequate notice of that hearing, the state will meet CAA requirements in this regard. Because of the self-evident efficiencies in combining those types of hearings, we continue to encourage states to consider this approach.

*C. Primacy of the SIP Process*

We reiterate, as we stated in the proposal, that this action is secondary to our overarching goal, which is to assure that in every instance, it will be the state that will be the permitting authority. EPA continues to recognize that the states are best suited to the task of permitting because the states and their sources have experience working together in the state PSD program to process permit applications. EPA seeks to remain solely in its primary role of providing guidance and acting as a resource for the states as they make the various required permitting decisions for GHG emissions.

Accordingly, we have continued to work closely with the states to help them promptly develop and submit to us their corrective SIP revisions that extend their PSD program to GHG-emitting sources. Some of the states have submitted drafts of their SIP revisions for parallel processing, and some have submitted their adopted SIP revisions for approval. We will act promptly on their SIP submittals and we have already proposed to approve some of the SIP submittals. Again, EPA's goal is to have each and every affected state have in place the necessary permitting authorities by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with the states directly through a concerted process of consultation and support.

EPA is taking up the additional task of issuing this SIP call and preparing to finalize, as necessary, the FIP action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.

In order to provide that assurance, we are obligated to recognize, as both states and the regulated community already do, that there may be circumstances in which states are simply unable to develop and submit those SIP revisions by January 2, 2011, or for some period of time beyond that date. As a result, absent further action by EPA, those states' affected sources confront the risk that they may have to put on hold their plans to construct or modify, a risk that may have adverse consequences for the economy.

Given these exigent circumstances, EPA is proceeding with this plan, within the limits of our power, with the intent to make a back-up permitting authority available—and to send a signal of assurance expeditiously in order to reduce uncertainty and thus facilitate businesses' planning. Within the design of the CAA, it is EPA that must fill that role of back-up permitting authority. This SIP call action and the associated FIP action fulfill the CAA requirements to establish EPA in that role.

At the same time, we take these actions with the intent that states retain as much discretion as possible. In this rulemaking, we have authorized states to choose the deadline they consider reasonable for submission of their corrective SIP revision. If, under CAA requirements, we are compelled to promulgate a FIP, we invite the affected state to accept a delegation of authority to implement that FIP, so that it will still be the state that processes the permit applications, although operating under federal law. In addition, if we are compelled to issue a FIP, we intend to continue to work closely with the state to assist it in developing and submitting for approval its corrective SIP revision, so as to minimize the amount of time that the FIP must remain in place.

It is clear from the responses states made to our request in the proposal to advise us concerning the appropriate deadline for SIP submittal, and also from states' comments on the proposal, that officials in many states recognize the need for our SIP call and FIP actions, that is, that a short-term FIP may be necessary in their states to establish permitting authority to construct and modify in accordance with environmental safeguards for these sources. In addition, some states (Kansas; Arizona's Pinal County) have already indicated in their responses that they will accept delegation of the permitting responsibilities.

*D. Effective Date*

This rule is effective immediately upon publication in the **Federal Register.** Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register.** However, APA section 553(d)(3) provides an exception when the agency finds good cause exists for a rule to take effect in less than 30 days.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with the Agency's ability to ensure that, as of January 2, 2011, there is a permitting authority authorized to issue certain major stationary sources in the affected states the required PSD permits for GHG emissions. A 30-day delay in the effective date of this rule will impede implementation of this rule and create regulatory confusion. This rule establishes, for each affected state, a date by which the state must submit a corrective SIP revision; after that date, EPA may issue a FIP. This rule sets that deadline for some states as December 22, 2010, and this rule states that if a state does not meet that deadline, EPA will issue a finding of failure to submit a required SIP revision and issue a FIP on December 23, 2010. This will allow the FIP to be published and become effective by the January 2, 2011, date that PSD will first apply to GHG-emitting sources under the CAA. It is unclear whether EPA could impose these deadlines if this rule had a 30-day effective date, resulting in confusion

about when the deadlines would take effect. Plus, if EPA could not impose those deadlines, for whatever reason, then, as of January 2, 2011, certain major stationary sources in the affected states would be required to obtain PSD permits for GHG emissions that no permitting authority would be authorized to issue. Thus it would be impractical to wait 30 days to provide a regulatory mechanism to avoid the confusion that could result if this rule is not effective upon publication. Moreover, EPA finds that it is necessary to make this rule effective upon publication to avoid any economic harm that the public and the regulated industry might incur if there is no permitting authority able to issue PSD permits for GHG emissions on January 2, 2011.

The purpose of the APA's 30-day effective date provision is to give affected parties time to adjust their behavior before the final rule takes effect. The states for which the rule sets short deadlines have each indicated in comment letters to EPA that they do not object to those deadlines; states with longer deadlines will, in fact, have more than 30 days to react to this rule. Both the states and the public have been aware of this impending final rule for some time, as it was made available to the public on August 12, 2010, even before its September 2, 2010, publication date in the **Federal Register**, and the public was afforded the opportunity to comment on the proposal. 75 FR 53892. The public has also been aware of the timeline for this action, since the proposed rule stated that the rule would be finalized on December 1, 2010, and that it may set dates for state action as early as December 22, 2010. *See* 75 FR 53892, 53896.

In addition, this rule is not a major rule under the Congressional Review Act (CRA). Thus, the 60-day delay in effective date required for major rules under the CRA does not apply.

## VI. Statutory and Executive Order Reviews

### *A. Executive Order 12866—Regulatory Planning and Review*

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

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of 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 impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*see* 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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will affect states and will not, in and of itself, directly affect sources. In addition, although this rule could lead to federal permitting requirements for certain sources, those sources are large emitters of GHGs and tend to be large sources. This final rule will not impose any requirements on small entities.

### *D. Unfunded Mandates Reform Act*

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The action may impose a duty on certain state, local or tribal governments to meet their existing obligation for PSD SIP submittal, but with lesser expenditures. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA refers to the definition of a small governmental jurisdiction that the Regulatory Flexibility Act uses, which is a government of a city, county, town, school district, or special district with a population of less than 50,000. Thus, this rule only applies to large state and local permitting programs and not to small governments.

### *E. Executive Order 13132—Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposal for this action from state and local officials.

### *F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any tribal implementation plans. This action is limited to states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this final rule, EPA specifically solicited additional comment on the proposal for this action from tribal officials and we received one comment from a tribal agency. Additionally, EPA participated in a conference call on July 29, 2010, with the National Tribal Air Association (NTAA).

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.'

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This 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 12898 (59 FR 7629, February 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 U.S.

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 rule merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action does not constitute a "major rule" as defined by 5 U.S.C. 804(2). Therefore, this action will be effective December 13, 2010.

## VII. Judicial Review

Under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 11, 2011. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

## VIII. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

## List of Subjects in 40 CFR Part 52

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: December 1, 2010.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2010–30854 Filed 12–10–10; 8:45 am]

BILLING CODE 6560–50–P


Federal Register

Monday,
December 13, 2010

Part III

# Department of Defense

# General Services Administration

# National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 1, 2, 3, et al.
Federal Aquisition Regulations; Final Rules, Interim Rules, and Small Entity Compliance Guide

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**[Docket FAR 2010–0076, Sequence 9]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–47; Introduction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–47. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

**DATES:** For effective dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–47 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–47

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | Notification of Employee Rights Under the National Labor Relations Act (Interim) | 2010–006 | McFadden. |
| II | HUBZone Program Revisions | 2006–005 | Morgan. |
| III | Preventing Abuse of Interagency Contracts (Interim) | 2008–032 | Sakalos. |
| IV | Small Disadvantaged Business Self-Certification (Interim) | 2009–019 | Morgan. |
| V | Uniform Suspension and Debarment Requirement (Interim) | 2009–036 | Gary. |
| VI | Limitation on Pass-Through Charges | 2008–031 | Chambers. |
| VII | Technical Amendments. | | |

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–47 amends the FAR as specified below:

### Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR Case 2010–006) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). The Executive order requires contractors and subcontractors to post a notice that includes employee rights under the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. This FAR interim rule establishes a new subpart 22.16, Notification of Employee Rights under the National Labor Relations Act. The rule also creates a new FAR clause 52.222–40, Notification of Employee Rights under the National Labor Relations Act. In addition, this rule revises the FAR clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244–6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222–40. The required employee notice, "Notification of Employee Rights Under the National Labor Relations Act," may be obtained from the DoL; downloaded from a DoL Web site; provided by the Federal contracting agency, if requested; or reproduced and used as exact duplicate copies of the DoL's official poster (*see* FAR 52.222–40(c)). Contracting officers shall insert the clause at FAR 52.222–40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

A contracting agency may modify the clause at FAR 52.222–40, if necessary, to reflect an exemption granted by the Secretary of the Department of Labor (*see* 22.1603(b)).

### Item II—HUBZone Program Revisions (FAR Case 2006–005)

This FAR final rule implements the Small Business Administration (SBA) final rule published in the **Federal Register** at 69 FR 29411 on May 24, 2004, and an interim rule published in the **Federal Register** at 70 FR 51243 on August 30, 2005, amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act of 2005, and other various policy changes. The FAR is amended to—

(1) Require a HUBZone small business concern to be a HUBZone small business concern both at the time of its initial offer and at the time of contract award;

(2) Require that HUBZone concerns provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility;

(3) *Allow waiver of the 50 percent requirement.* In accordance with 13 CFR 126.700, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own employees or subcontract employees of

other HUBZone small business concerns. This final rule amends FAR clause 52.219–3, Notice of Total HUBZone Set-Aside, and FAR clause 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, to include an Alternate I, to be used to waive the 50 percent requirement only after determining that at least two HUBZone small business concerns cannot meet the requirement. However, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

**Item III—Preventing Abuse of Interagency Contracts (FAR Case 2008–032) (Interim)**

This interim rule implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. FAR subpart 17.5 now addresses all interagency acquisitions, not just those made under the Economy Act authority. A new subsection 17.502–1 is added to require that all interagency acquisitions include a determination of best procurement approach. For an assisted acquisition between the servicing agency and the requesting agency, this subsection now requires a written agreement that establishes the general terms and conditions governing the relationship between the parties. Subsection 17.502–2 contains business-case analysis requirements when an agency wishes to establish a contract that would be used by other agencies. There is a statutory exception included in subpart 17.5 for orders of $500,000 or less issued against Federal Supply Schedules.

**Item IV—Small Disadvantaged Business Program Self-Certification of Subcontractors (FAR Case 2009–019) (Interim)**

This interim rule amends the FAR by allowing small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This change implements revisions made by the Small Business Administration (SBA) to its SDB regulations. This case only addresses the subcontracting status portion of the SBA final rule for Small Disadvantaged Business certification. The Small Disadvantaged Business certification for prime contracts will be addressed in a future rule. This change removes a cost of compliance burden on SDB subcontractors seeking SBA certification.

**Item V—Uniform Suspension and Debarment Requirement (FAR Case 2009–036) (Interim)**

This interim rule amends the FAR at parts 9 and 52 to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for the acquisition of commercially available off-the-shelf items, and in the case of contracts for the acquisition of commercial items, first-tier subcontracts only.

This requirement will protect the Government against contracting with entities at any tier who are suspended, debarred or proposed for debarment. This rule does not have a significant impact on the Government, contractors or any automated systems.

**Item VI—Limitations on Pass-Through Charges (FAR Case 2008–031)**

This final rule adopts the interim rule published in the **Federal Register** at 74 FR 52853, October 14, 2009, as a final rule with minor changes.

The interim rule amended the FAR to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109–364). This legislation required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

**Item VII—Technical Amendments**

Editorial changes are made at FAR 3.104–1, 5.601, 7.105, and 10.002.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

Dated: November 23, 2010.

**Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: November 24, 2010.

**Joseph A. Neurauter,**

*Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: November 23, 2010.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2010–30558 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1, 2, 22, and 52

**[FAC 2005–47; FAR Case 2010–006; Item I; Docket 2010–0106, Sequence 1]**

**RIN 9000–AL76**

## Federal Acquisition Regulation; Notification of Employee Rights Under the National Labor Relations Act

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). This Executive Order requires contractors to display a notice to employees of their rights under Federal labor laws, and the DoL has determined that the notice shall include employee rights under the National Labor Relations Act.

**DATES:** *Effective Date:* December 13, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–47, FAR Case 2010–006, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–006" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–006." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–006" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–47, FAR Case 2010–006, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Clare McFadden, Procurement Analyst, at (202) 501–0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–47, FAR Case 2010–006.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, dated January 30, 2009 (published in the **Federal Register** at 74 FR 6107 on February 4, 2009), which revokes Executive Order 13201 of February 17, 2001, requires contractors and subcontractors to post a notice that informs employees of their rights under Federal labor laws. DoL has determined that the notice shall include employee rights under the National Labor Relations Act ("Act"), 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. The DoL rule provides sanctions for noncompliance, but full compliance with the Executive Order and any related rules, regulations and orders of the Secretary of Labor is expected of all contractors. The DoL issued a final rule implementing Executive Order 13496 at 29 CFR part 471, published in the **Federal Register** at 75 FR 28368 on May 20, 2010, with an effective date of June 21, 2010.

This FAR interim rule implements the requirements of the DoL final rule by creating a new FAR subpart 22.16 and clause 52.222–40, Notification of Employee Rights Under the National Labor Relations Act. Additionally, this rule revises FAR clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and FAR 52.244–6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222–40.

This rule amending the FAR is the formal notice to contracting officers to insert FAR clause 52.222–40 in all solicitations and contracts including acquisitions for commercial items and commercially available off-the-shelf (COTS), except acquisitions (*see* FAR 22.1605)—

(1) Under the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered in their entirety by an exemption granted by the Secretary of Labor.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it implements the requirements of DoL's final rule, published in the **Federal Register** on May 20, 2010, with an effective date of June 21, 2010, that implemented Executive Order 13496 at 29 CFR part 471. The DoL final rule, implementing the requirements of Executive Order 13496, requires contractors to post notices and to insert a clause in subcontracts requiring subcontractors to post the notice and similarly insert a clause in their subcontracts. The notice advises contractor and subcontractor employees of their rights under the National Labor Relations Act. The rule provides sanctions for noncompliance, but full compliance with the Executive Order and any related rules, regulations and orders of the Secretary of Labor is expected of all contractors. Further, this rule is only implementing the DoL rule which prescribes the content of the notices to be posted. The Department of Labor has certified that its rule will not have a significant economic impact on a substantial number of small entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–47, FAR Case 2010–006) in all correspondence.

### C. Paperwork Reduction Act

This interim rule does not impose any information collection requirements apart from those already imposed by the DoL rule (75 FR 28368, May 20, 2010, effective date June 21, 2010). DoL has addressed the Paperwork Reduction Act (44 U.S.C. chapter 35) in the preamble to the final rule. DoL identified the burdens associated with the filing and processing of complaints by complainants and contractors in the notice of final rulemaking and obtained Office of Management and Budget clearance for such burdens. DoL also noted that the public disclosure of information originally supplied by the Federal Government to a recipient for the purpose of disclosure to the public is not considered a collection of information under the Act. The Councils believe that the package submitted by DoL meets the requirement imposed by the Paperwork Reduction Act and sufficiently covers this interim rule so that no further action is necessary.

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order 13496 and the DoL rule at 29 CFR part 471, effective June 21, 2010. If this rule is not issued as an interim rule, contractors will not have the contractual requirement to display the notice to employees of their rights under Federal labor laws, as is required by DoL regulations on or after June 21,

2010. In addition, the regulated community was provided ample opportunity to comment on DoL's promulgation of that regulation, which prescribes the content of the employee notice, requirements for its posting, and enforcement procedures, and DoL received and considered numerous such comments in drafting the final rule. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 1, 2, 22, and 52**

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 22, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segment "22.16" and its corresponding OMB Control Number "1215–0209", and FAR segment "52.222–40" and its corresponding OMB Control Number "1215–0209".

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b)(2), in the definition "United States" by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and adding a new paragraph (5) to read as follows:

### 2.101 Definitions.

* * * * *

*United States* * * *

(5) For use in subpart 22.16, *see* the definition at 22.1601.

* * * * *

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 4. Add subpart 22.16 to read as follows:

**Subpart 22.16—Notification of Employee Rights Under the National Labor Relations Act**

Sec.

22.1600 Scope of subpart.
22.1601 Definitions.
22.1602 Policy.
22.1603 Exceptions.
22.1604 Compliance evaluation and complaint investigations and sanctions for violations.
22.1605 Contract clause.

## Subpart 22.16—Notification of Employee Rights Under the National Labor Relations Act

### 22.1600 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 13496, dated January 30, 2009 (74 FR 6107, February 4, 2009).

### 22.1601 Definitions.

As used in this subpart—

*Secretary* means the Secretary of Labor, U.S. Department of Labor.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

### 22.1602 Policy.

(a) Executive Order 13496 requires contractors to post a notice informing employees of their rights under Federal labor laws.

(b) The Secretary has determined that the notice must contain employee rights under the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.* The Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self-organize, and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

### 22.1603 Exceptions.

(a) The requirements of this subpart do not apply to—

(1) Contracts under the simplified acquisition threshold;

(2) Subcontracts of $10,000 or less; and

(3) Contracts or subcontracts for work performed exclusively outside the United States.

(b) *Exemptions granted by the Secretary.* (1) If the Secretary finds that the requirements of the Executive Order impair the ability of the Government to procure goods and services on an economical and efficient basis or if special circumstances require an exemption in order to serve the national interest, the Secretary may exempt a contracting department or agency, or groups of departments or agencies, from the requirements of any or all of the provisions of this Executive Order with respect to a particular contract or subcontract, or any class of contracts or subcontracts, including the requirement to include the clause at 52.222–40, or parts of that clause, in contracts.

(2) Requests for exemptions may be submitted in accordance with Department of Labor regulations at 29 CFR 471.3.

### 22.1604 Compliance evaluation and complaint investigations and sanctions for violations.

(a) The Secretary may conduct compliance evaluations or investigate complaints of any contractor or subcontractor to determine if any of the requirements of the clause at 52.222–40 have been violated.

(b) Contracting departments and agencies shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions.

(c) If the Secretary determines that there has been a violation, the Secretary may take such actions as set forth in 29 CFR 471.14.

(d) The Secretary may not terminate or suspend a contract or suspend or debar a contractor if the agency head has provided written objections, which must include a statement of reasons for the objection and a finding that the contractor's performance is essential to the agency's mission, and continues to object to the imposition of such sanctions and penalties. Procedures for enforcement by the Secretary are set out in 29 CFR 471.10 through 29 CFR 471.16.

### 22.1605 Contract clause.

(a) Insert the clause at 52.222–40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) *Under the simplified acquisition threshold.* For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

(b) A contracting agency may modify the clause at 52.222–40, if necessary, to reflect an exemption granted by the Secretary (*see* 22.1603(b)).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (b)(27) through (b)(44) as paragraphs (b)(28) through (b)(45), respectively; and adding a new paragraph (b)(27);
■ c. Adding paragraph (e)(1)(vii); and
■ d. In Alternate II by—
■ (1) Revising the date of Alternate II;
■ (2) Redesignating paragraphs (e)(1)(ii)(G) through (M) as paragraphs (e)(1)(ii)(H) through (N), respectively; and adding a new paragraph (e)(1)(ii)(G).

The revised and added text reads as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

* * * * *

**Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (DEC 2010)**

* * * * *

(b) * * *

(27) 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

* * * * *

(e)(1) * * *

(vii) 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222–40.

* * * * *

*Alternate II (DEC 2010).*

* * * * *

(e)(1) * * *

(ii) * * *

(G) 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222–40.

* * * * *

■ 6. Amend section 52.213–4 by revising the date of the clause; and removing from paragraph (a)(2)(vii) "(Oct 2010)" and adding "(DEC 2010)" in its place.

The revision reads as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

* * * * *

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEC 2010)**

* * * * *

■ 7. Add section 52.222–40 to read as follows:

**52.222–40 Notification of Employee Rights Under the National Labor Relations Act.**

As prescribed in 22.1605, insert the following clause:

**Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at *http://www.dol.gov/olms/regs/compliance/EO13496.htm;* or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

■ 8. Amend section 52.244–6 by revising the date of the clause and adding paragraph (c)(1)(vii) to read as follows:

**52.244–6 Subcontracts for Commercial Items.**

* * * * *

**Subcontracts for Commercial Items (DEC 2010)**

* * * * *

(c)(1) * * *

(vii) 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222–40.

* * * * *

[FR Doc. 2010–30559 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 19, 33, and 52**

**[FAC 2005–47; FAR Case 2006–005; Item II; Docket 2009–0014, Sequence 2]**

**RIN 9000–AL18**

## Federal Acquisition Regulation; HUBZone Program Revisions

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to the Small Business Administration's HUBZone Program. This case requires that, for award of a HUBZone contract, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award. In addition, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own employees or subcontract employees of other HUBZone small business concerns. The 50 percent requirement may be waived in some circumstances.

**DATES:** *Effective Date:* January 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR Case 2006–005.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 16823 on April 13, 2009. This FAR final rule implements the Small Business Administration (SBA) final rule published in the **Federal Register** at 69 FR 29411 on May 24, 2004, and an interim rule amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act, 2005, and other various policy changes published in the **Federal Register** at 70 FR 51243 on August 30, 2005. The public comment period for the FAR proposed rule closed June 12, 2009. Seven respondents submitted comments on the proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided below.

1. *Comment:* Confirmation of subcontractors' representation. The respondent expressed concern that the addition of paragraph (d)(2) to FAR 52.219–8, Utilization of Small Business Concerns, requiring prime contractors to confirm that a subcontractor's representation as a HUBZone concern has been certified by the SBA, would add time and expense to the solicitation and award of subcontracts, particularly when Web sites are down for maintenance or experiencing technical issues and prime contractors must rely on a written response from the SBA to a letter or e-mail. The respondent is concerned that this requirement imposes an additional burden on prime contractors that will result in no direct improvement in the existing process.

*Response:* The revision to FAR 52.219–8(d)(2) makes it clear that the contractor is required to verify the "qualified" HUBZone small business status of its subcontractor, using any of the suggested sources in the regulation.

Section 3(p)(5)(D) of the Small Business Act requires SBA to establish a "List of Qualified HUBZone Small Business Concerns" which is available "to any Federal agency or other entity." This final rule includes the SBA Internet site at *http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm* available to the public where the list of qualified HUBZone small businesses may be accessed. The list can also be obtained by accessing *http://www.sba.gov/hubzone*. HUBZone qualified subcontractors are required to be certified by SBA pursuant to the Small Business Act and SBA's regulations and this clause ensure that HUBZone subcontracts are awarded to, and goaling credit received for, eligible concerns.

2. *Comment:* Applicability of additional paragraph. Three respondents expressed concern with the addition of paragraph (d)(3) in FAR clause 52.219–8, Utilization of Small Business Concerns. According to the respondents, the proposed requirement is not limited in scope. It would apparently apply to all subcontract competitions, even competitions in which a small business did not compete. One of the respondents believes that there will be a significant impact to the procurement process should this proposed rule be adopted as published, and the respondent also believes that protests are not allowed at the subcontract level. The proposed requirement for advance notice will delay subcontract awards, impact program schedules, require significantly more effort, increase the number of disputes, and increase administrative costs. One of the respondents requested an exception for those contractors that have successfully undergone an approved Contractor Purchasing System Review in accordance with FAR subpart 44.3 and maintain an approved system. A respondent requested a waiver of the clause if the contractor has undergone a successful Contractor Purchasing System Review.

*Response:* The final rule amends the FAR to conform to existing SBA regulations (13 CFR 125.3(c)(1)(v) for subcontracts above $100,000, and 13 CFR 125.3(c)(1)(vi) which addresses best practices for under $100,000). The SBA regulations prescribe written notification which must include the name and location of the apparent successful offeror and its small business program status. The intent of the notification requirement is to allow the unsuccessful small business subcontractor to protest the size status of the successful subcontractor to the contracting officer or SBA (*see* FAR 19.703). The SBA regulation was not adequately addressed in the proposed rule and the coverage has been narrowed and moved to FAR 52.219–9, Small Business Subcontracting Plan. The requirement for notification applies only to prime contractors with contracts requiring subcontracting plans. The notification applies to those subcontracts over the simplified acquisition threshold in which a small business concern received a preference. The Councils do not agree with waiver of the clause if the contractor has undergone a successful Contractor Purchasing System Review.

3. *Comment:* Commercial items. Two respondents urge the FAR Council not to apply the proposed FAR 52.219–8(d) successful subcontractor notification to prime contractors that are suppliers of commercial items. One respondent stated that the FAR does not define "subcontractor" in the context of commercial item acquisition and believes that the clause requires the prime contractor to reveal competitive information about its subcontractor. The respondents state that it is impractical to segregate the purchases of materials and other supplies and services for

products sold under Government contracts from those sold under other commercial contracts. In addition, the proposed rule is not required by statute and SBA is not obligated or permitted to impose this requirement on commercial item acquisitions.

*Response:* The respondents misinterpreted the commercial item statute. The SBA regulation upon which this is based, 13 CFR 125.3(c)(1)(v), is not required by statute and cannot be waived under FAR subpart 12.5 procedures. However, the SBA regulation was not adequately addressed in the proposed rule, and the coverage has been narrowed and moved to FAR 52.219–9(e)(6). The requirement for notification applies only to prime contractors with contracts requiring subcontracting plans. The notification applies to those subcontracts over the simplified acquisition threshold in which a small business concern received a preference. In addition, "subcontract" is defined in FAR 2.101, and the Councils determined that there was no need to create a special definition for this case. Further, the notification releases only the name of the apparent successful small business subcontractor, its location, and its small business status so that others may protest its size; this does not reveal competitive information about the subcontractor.

4. *Comment:* Task orders. The respondent requested that the regulations address the use of HUBZones in task-order contracts. The respondent is concerned with the accountability of firms and the oversight afforded them by the contracting officer.

*Response:* If the contracting officer is notified of possible contractor violations of Federal law involving fraud, waste, or abuse, or a violation of the False Claims Act, the contracting officer must either coordinate the matter with the agency Office of the Inspector General, or take action in accordance with agency procedures and in accordance with FAR part 3, Improper Business Practices and Personal Conflicts of Interest. Additionally, the FAR requires the contracting officer to monitor the contractor's performance throughout the life of the contract. Where the contractor is found to be in noncompliance with the terms and conditions of the contract, such as compliance with the Limitations on Subcontracting clause (FAR 52.219–14), the contracting officer is required to take appropriate action in accordance with FAR part 42.

5. *Comment:* Geographical restriction. The respondent requested that the rule contain a geographic restriction for HUBZone performance and address contract administration and other enforcement issues.

*Response:* The comment is outside the scope of this FAR case.

6. *Comment:* Use of terminology. The respondent noted that FAR 19.1303(a) should be changed to reflect deletion of the word "qualified" in the title of this section.

*Response:* The final rule deletes the word "qualified."

7. *Comment:* Sole source authority. The respondent suggested replacing the language at FAR 19.1306, HUBZone sole source awards, to be consistent with the proposed Service-Disabled Veteran-Owned Small Business rule addressing sole source award authority (74 FR 23373, May 19, 2009).

*Response:* FAR Case 2008–023, Clarification of Criteria for Sole Source Awards to Service Disabled Veteran Owned Small Business Concerns, was published as a final rule in the **Federal Register** at 75 FR 38687 on July 2, 2010. The changes in that rule have been reflected in this case.

8. *Comment:* Clause numbering. The respondent stated that the proposed rule, at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, appears to have inadvertently used the wrong suhparagraph numbers for the clauses listed in paragraph (b) of the clause.

*Response:* The paragraph numbering has been revised in the final rule to reflect the current FAR baseline.

9. *Comment:* Program parity. The respondent stated that the proposed rule should address "parity" among all of SBA's programs, *i.e.*, HUBZone, 8(a), and Service-Disabled Veteran-Owned Small Business.

*Response:* This comment is outside the scope of this FAR case.

10. *Comment:* Price preference. The respondent stated that the newly designated FAR 19.1309(b) is inconsistent with the statute creating the HUBZone program and therefore the second sentence should be deleted. The HUBZone Act requires that a HUBZone price preference he applied in the evaluation process for all full and open competitions.

*Response:* The sentence was deleted. The HUBZone Price Evaluation Preference applies to those contracting actions that are awarded through full and open competition to HUBZone Small Business Concerns. FAR 19.1307(a)(1) has also been deleted.

11. *Comment:* HUBZone certification by contracting officer. The respondent has requested deletion of the second sentence of FAR 52.219–3(f) and 52.219–4(g) from the final rule, which mandates that a HUBZone offeror provide the contracting officer a copy of its HUBZone eligibility if material changes occur before contract award that could affect its eligibility. The respondent states that the contracting officer is not the authority allowed to take action on such facts; only the SBA has the authority to certify or de-certify a HUBZone small business. In addition, the HUBZone small business may he able to resolve any issue which would prevent the SBA from taking action to de-certify the firm.

*Response:* The contracting officer does not have the authority to certify or de-certify a HUBZone program participant. If the contracting officer receives a notice of a material change from a HUBZone small business concern, then he/she should file a HUBZone status protest before awarding a HUBZone contract to that concern.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexihility Analysis (FRFA), and it is summarized as follows:

The FAR rule requires a HUBZone small business concern to be eligible for the HUBZone Program both at the time of its initial offer and at the time of contract award. This requirement will eliminate some small businesses that are not eligible in both instances. In addition, it is estimated that approximately 220 counties will be added as HUBZones as a result of base closures. The requirements for percentage of work that must be performed hy the HUBZone contractor's own employees or a HUBZone subcontractor has been increased for the "performance of work" requirements for general and specialty construction. The rule impacts some small business concerns hy revising the FAR to state that except for construction or service contracts, when the total value of the contract exceeds $25,000, a HUBZone small business concern nonmanufacturer must agree to furnish in performing the contract only end items manufactured or produced by HUBZone small business manufacturer concerns.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat will be submitting a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the

FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

**List of Subjects in 48 CFR Parts 2, 19, 33, and 52**

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 19, 33, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, 33, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) in the definitions by—

■ a. Revising the definition of "HUBZone";

■ b. Adding in alphabetical order the definition of "HUBZone contract"; and

■ c. Removing from the definition of "HUBZone small business concern" the word "Administration" and adding "Administration (13 CFR 126.103)".

The revised and added text reads as follows:

**2.101 Definitions.**

* * * * *

(b) * * *

(2) * * *

*HUBZone* means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, or redesignated areas, as defined in 13 CFR 126.103.

*HUBZone contract* means a contract awarded to a "HUBZone small business" concern through any of the following procurement methods:

(1) A sole source award to a HUBZone small business concern.

(2) Set-aside awards based on competition restricted to HUBZone small business concerns.

(3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.

* * * * *

## PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.000 by revising paragraph (a)(6) to read as follows:

**19.000 Scope of part.**

(a) * * *

(6) The "8(a)" business development program (hereafter referred to as 8(a) program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;

* * * * *

■ 4. Amend section 19.101 in the definition "Affiliates", in paragraph (7) by—

■ a. Redesignating paragraphs (7)(ii) through (7)(v) as paragraphs (7)(iii) through (7)(vi);

■ b. Adding a new paragraph (7)(ii); and

■ c. Revising the first sentence of newly redesignated paragraph (7)(iii).

The added and revised text reads as follows:

**19.101 Explanation of terms.**

* * * * *

*Affiliates* * * *

(7) * * *

(ii) *HUBZone joint venture.* A HUBZone joint venture of two or more HUBZone small business concerns may submit an offer for a HUBZone contract as long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided one of the following conditions apply:

(A) The aggregate total of the joint venture is small under the size standard corresponding to the NAICS code assigned to the contract.

(B) The aggregate total of the joint venture is not small under the size standard corresponding to the NAICS code assigned to the contract and either—

(*1*) For a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(*2*) For an employee-based size standard, the estimated contract value exceeds $10 million.

(iii) *Joint venture.* Concerns submitting offers on a particular acquisition as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. * * *

* * * * *

■ 5. Amend section 19.102 by adding paragraph (f)(8) to read as follows:

**19.102 Size standards.**

* * * * *

(f) * * *

(8) For non-manufacturer rules pertaining to HUBZone contracts, *see* 19.1303(e).

* * * * *

■ 6. Amend section 19.306 by—

■ a. Redesignating paragraphs (a) through (k) as paragraphs (b) through (l);

■ b. Adding new paragraph (a);

■ c. Revising the newly redesignated paragraph (b);

■ d. Removing from end of newly redesignated paragraph (d) "(AA/HUB)" and adding "(Director/HUB)" in its place;

■ e. Revising the newly redesignated paragraphs (e) and (l);

■ f. Redesignating newly redesignated paragraphs (g) through (l) as (h) through (m);

■ g. Adding a new paragraph (g);

■ h. Removing from the second sentence of the newly redesignated paragraph (i) "8(a) Business Development (ADA/GC&8(a)BD)." and adding "Administrator for Government Contracting and 8(a) Business Development(AA/GC&BD)." in its place;

■ i. Removing from the newly redesignated paragraph (j) "ADA/GC&8(a)BD" and adding "AA/GC&BD" in its place (twice).

■ j. Removing from the newly redesignated paragraph (k) "AA/HUB" and adding "Director/HUB" in its place;

■ k. Removing from the newly redesignated paragraph (l) "AA/HUB's" and adding "Director/HUB's" in its place; and

■ l. Removing from the first sentence of the newly redesignated paragraph (m) "ADA/GC&8(a)BD" and adding "AA/GC&BD" in its place and removing from the last sentence "ADA/GC&8(a)BD's" and adding "AA/GC&BD's" in its place.

The added and revised text reads as follows:

**19.306 Protesting a firm's status as a HUBZone small business concern.**

(a) *Definition.* As used in this section—

*Interested party* has the meaning given in 13 CFR 126.103.

(b) *HUBZone Small Business Status.* (1) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business concern status.

(2) For all other acquisitions, an offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's qualified HUBZone small business concern status.

* * * * *

(e)(1) The protest of an offeror that is an interested party must be submitted by—

(i) For sealed bids:

(A) The close of business on the fifth business day after bid opening; or

(B) The close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening.

(ii) For negotiated acquisitions, the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest submitted after these time limits is untimely, unless it is submitted by the SBA or the contracting officer. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(f) Except for premature protests, the contracting officer shall forward all protests received, notwithstanding whether the contracting officer believes that the protest is not sufficiently specific, timely, or submitted by an interested party. The contracting officer shall also forward a referral letter with the information required by 13 CFR 126.801(e).

(g)(1) Protests may be submitted in person or by facsimile, express delivery service, or U.S. mail (postmarked within the applicable time period) to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Fax (202) 205–7167.

(2) The Director/HUB will notify the protester and the contracting officer that the protest was received and indicate whether the protest will be processed or dismissed for lack of timeliness or specificity. A protest will be dismissed if SBA determines the protester is not an interested party.

* * * * *

■ 7. Amend section 19.703 by revising paragraphs (d)(1)(i) and (ii) to read as follows:

**19.703 Eligibility requirements for participating in the program.**

* * * * *

(d)(1) * * *

(i) HUBZone small business database search application Web page at *http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm* or *http://www.sba.gov/hubzone.*

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

* * * * *

**19.800 [Amended]**

■ 8. Amend section 19.800 in paragraph (e) by removing the last sentence.

**19.803 [Amended]**

■ 9. Amend section 19.803 in paragraph (c) by removing from the end of the last sentence "(but *see* 19.800(e))".

**19.804–3 [Amended]**

■ 10. Amend section 19.804–3 in paragraph (a) by removing from the last sentence "(AA)/8(a)/BD".

**19.805–1 [Amended]**

■ 11. Amend section 19.805–1 in paragraph (d) by removing "(AA/8(a)BD)" and adding "(AA/BD)" in its place; and removing "AA/8(a)BD" and adding "AA/BD" in its place each time it appears (two times).

■ 12. Amend section 19.1301 by revising paragraph (a) to read as follows:

**19.1301 General.**

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program.

* * * * *

■ 13. Amend section 19.1303 by—

■ a. Revising the section heading;

■ b. Removing from paragraph (a) "qualified";

■ c. Revising paragraphs (b), (c), and (d); and

■ d. Adding paragraph (e).

The revised and added text reads as follows:

**19.1303 Status as a HUBZone small business concern.**

* * * * *

(b) If the SBA determines that a concern is a HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns at *http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm*. Only firms on the list are HUBZone small business concerns, eligible for HUBZone preferences. HUBZone preferences apply without regard to the place of performance. Information on HUBZone small business concerns can also be obtained at *http://www.sba.gov/hubzone* or by writing to the Director for the HUBZone Program (Director/HUB) at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at *hubzone@sba.gov*.

(c) A joint venture may be considered a HUBZone small business concern if it meets the criteria in the explanation of affiliates (*see* 19.101).

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award.

(e) A HUBZone small business concern may submit an offer for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at 13 CFR 121.406(b)(1) and if the small business manufacturer providing the end item is also a HUBZone small business concern.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(2) For HUBZone contracts at or below $25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

■ 14. Amend section 19.1305 by—

■ a. Removing from paragraph (a) "A participating agency contracting" and adding "The contracting" in its place;

■ b. Removing from paragraph (c) "A participating agency" and adding "A contracting officer" in its place; and

■ c. Revising paragraph (e) to read as follows:

**19.1305 HUBZone set-aside procedures.**

* * * * *

(e) The procedures at 19.202–1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section.

(1) When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, *see* 19.402(a)) to set aside an acquisition for competition restricted to HUBZone small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 business days of receiving the contracting officer's notice of rejection.

(2) Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist.

(3) Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the agency, or the appeal will be deemed withdrawn. The head of the agency shall reply to SBA within 15

business days of receiving the appeal. The decision of the head of the agency shall be final.

■ 15. Amend section 19.1306 by revising paragraph (a) introductory text and paragraph (a)(2)(ii) to read as follows:

**19.1306 HUBZone sole source awards.**

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (*see* 19.501(c) and 6.302–5(b)(5)) before considering small business set-asides (*see* subpart 19.5), provided none of the exclusions at 19.1304 apply; and—

* * * * *

(2) * * *

(ii) $4 million for a requirement within all other NAICS codes;

* * * * *

■ 16. Amend section 19.1307 by removing paragraph (a)(1); redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2), respectively; amending newly redesignated paragraph (a)(1) by adding "or" to the end of the paragraph; and adding paragraph (e) to read as follows:

**19.1307 Price evaluation preference for HUBZone small business concerns.**

* * * * *

(e) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, the contracting officer shall award the contract to the HUBZone small business concern.

**19.1308 [Redesignated as 19.1309]**

■ 17a. Redesignate section 19.1308 as section 19.1309

■ 17b. Add new section 19.1308 to read as follows:

**19.1308 Performance of work requirements (limitations on subcontracting) for general construction or construction by special trade contractors.**

(a) Before issuing a solicitation for general construction or construction by special trade contractors, the contracting officer shall determine if at least two HUBZone small business concerns can spend at least 50 percent of the cost of contract performance to be incurred for personnel on their own employees or subcontract employees of other HUBZone small business concerns.

(b) The clause at 52.219–3, Notice of Total HUBZone Set-Aside or Sole Source Award, or 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, shall be used, as applicable, with its Alternate I to waive the 50 percent requirement (*see* 19.1309) if at least two HUBZone small business concerns cannot meet the conditions of paragraph (a); but, the HUBZone prime contractor can still meet the following—

(1) For general construction, at least 15 percent of the cost of the contract performance to be incurred for personnel using the concern's employees; or

(2) For construction by special trade contractors, at least 25 percent of the cost of contract performance to be incurred for personnel using the concern's employees.

(c) *See* 13 CFR 125.6 for definitions of terms used in paragraph (a) of this section.

■ 17c. Revise newly redesignated section 19.1309 to read as follows:

**19.1309 Contract clauses.**

(a) The contracting officer shall insert the clause 52.219–3, Notice of Total HUBZone Set-Aside or Sole Source Award, in solicitations and contracts for acquisitions that are set aside for, or awarded on a sole source basis to, HUBZone small business concerns under 19.1305 or 19.1306.

(1) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at 19.1308(b) apply.

(2) If a waiver is granted, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

(b) The contracting officer shall insert the clause at FAR 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition.

(1) The contracting officer shall use the clause with its Alternate I to waive the 50 percent requirement if the conditions at 19.1308(b) apply.

(2) If a waiver is granted, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

## PART 33—PROTESTS, DISPUTES, AND APPEALS

■ 18. Amend section 33.102 in paragraph (a) by revising the second sentence to read as follows:

**33.102 General.**

(a) * * * (*See* 19.302 for protests of small business status, 19.305 for protests of disadvantaged business status, 19.306 for protests of HUBZone small business status, and 19.307 for protests of service-disabled veteran-owned small business status.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 19. Amend section 52.212–3 by revising the date of the provision and paragraphs (c)(10)(i) and (ii) to read as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Items.**

* * * * *

**Offeror Representations and Certifications—Commercial Items (JAN 2011)**

* * * * *

(c) * * *

(10) * * *

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [*The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

■ 20. Amend section 52.212–5 by—

■ a. Revising the date of the clause and paragraph (b)(7);

■ b. Removing from paragraph (b)(8) "(July 2005)" and adding "(JAN 2011)" in its place;

■ c. Removing from paragraph (b)(12) "(May 2004)" and adding "(JAN 2011)" in its place; and

■ d. Removing from paragraph (b)(13)(i) "(Oct 2010)" and adding "(JAN 2011)" in its place.

The revised text reads as follows:

**52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

* * * * *

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2011)**

* * * * *

(b) * * *

(7) 52.219–3, Notice of Total HUBZone Set-Aside or Sole-Source Award (JAN 2011) (15 U.S.C. 657a).

* * * * *

■ 21. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(vii) to read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

* * * * *

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (JAN 2011)**

(a) * * *

(2) * * *

(vii) 52.244–6, Subcontracts for Commercial Items (JAN 2011).

* * * * *

■ 22. Amend section 52.219–1 by revising the date of the provision and paragraphs (b)(6)(i) and (ii) to read as follows:

**52.219–1 Small Business Program Representations.**

* * * * *

**Small Business Program Representations (JAN 2011)**

* * * * *

(b) * * *

(6) * * *

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [*The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

* * * * *

■ 23. Amend section 52.219–3 by—

■ a. Revising the section heading, the introductory text, the date of the clause, and paragraph (a);

■ b. Removing from paragraph (b)(1) "concerns shall" and adding "concerns will" in its place;

■ c. Revising paragraphs (c)(3), (c)(4), (d), and (e); and

■ d. Adding paragraph (f) and Alternate I.

The revised and added text reads as follows:

**52.219–3 Notice of Total HUBZone Set-Aside or Sole Source Award.**

As prescribed in 19.1309(a), insert the following clause:

**Notice of Total Hubzone Set-Aside or Sole Source Award (JAN 2011)**

(a) *Definitions. See* 13 CFR 125.6(e) for definitions of terms used in paragraph (c).

* * * * *

(c) * * *

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors; and

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the aggregate of the HUBZone small business participants.

(e)(1) When the total value of the contract exceeds $25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than $25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply in connection with construction or service contracts.

(f) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

*Alternate I (JAN 2011).* As prescribed in 19.1309(a)(1), substitute the following paragraphs (c)(3) and (c)(4) for paragraphs (c)(3) and (c)(4) of the basic clause:

(c)(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(c)(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

■ 24. Amend section 52.219–4 by—

■ a. Revising the introductory paragraph, the date of the clause, and paragraph (a);

■ b. Adding paragraph (b)(4);

■ c. Removing from the second sentence of paragraph (c) introductory text "paragraph (d)" and adding "paragraphs (d) and (e)" in its place;

■ d. Revising paragraphs (d)(3), (d)(4), (e), and (f); and

■ e. Adding paragraph (g) and Alternate I.

The revised and added text reads as follows:

**52.219–4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.**

As prescribed in 19.1309(b), insert the following clause:

**Notice of Price Evaluation preference for HUBZone Small Business Concerns (JAN 2011)**

(a) *Definitions. See* 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) * * *

(4) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

* * * * *

(d) * * *

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for

personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)(1) When the total value of the contract exceeds $25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than $25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

*Alternate I (JAN 2011).* As prescribed in 19.1309(b)(1), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

■ 25. Amend section 52.219–8 by revising the date of the clause; and paragraph (d) to read as follows:

**52.219–8 Utilization of small business concerns.**

* * * * *

**Utilization of Small Business Concerns (JAN 2011)**

* * * * *

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at *http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm;* or *http://www.sba.gov/hubzone;*

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at *hubzone@sba.gov.*

■ 26. Amend section 52.219–9 by revising the date of the clause and adding paragraph (e)(6) to read as follows:

**52.219–9 Small business subcontracting plan.**

* * * * *

**Small Business Subcontracting Plan (JAN 2011)**

* * * * *

(e) * * *

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

* * * * *

[FR Doc. 2010–30560 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 2, 4, 8, 9, 17, 18, 35, and 41

**[FAC 2005–47; FAR Case 2008–032; Item III; Docket 2010–0107, Sequence 1]**

**RIN 9000–AL69**

## Federal Acquisition Regulation; Preventing Abuse of Interagency Contracts

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement provisions regarding, the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 requirements for preventing abuse of interagency contracts.

**DATES:** *Effective Date:* December 13, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–47, FAR Case 2008–032, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008–032" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2008–032." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008–032" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–47, FAR Case 2008–032, in all correspondence related to this case. All comments received will

be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–47, FAR Case 2008–032.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Interagency acquisitions offer important benefits to Federal agencies, including economies and efficiencies and the ability to leverage resources. This interim rule, which implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009, is designed to ensure these benefits are consistently achieved. The rule strengthens FAR subpart 17.5, Interagency Acquisitions, by—

- Broadening the scope of coverage to address all interagency acquisitions (with limited exceptions), rather than just those conducted under the Economy Act (31 U.S.C. 1535), in recognition that an increasing number of interagency acquisitions are conducted under other authorities;
- Requiring agencies to support the decision to use an interagency acquisition with a determination that such action is the "best procurement approach";
- Directing that assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency documenting the roles and responsibilities of the respective parties, including the planning, execution, and administration of the contract;
- Requiring the development of business cases to support the creation of multi-agency contracts. The Office of Management and Budget (OMB) is developing additional guidance on the use of business cases; once the guidance is issued, it will be referenced in the FAR; and
- Requiring the senior procurement executive for each executive agency to submit an annual report on interagency acquisitions to the Director of OMB, in accordance with section 865(c) of Public Law 110–417.

The interim rule clarifies the meaning of "interagency acquisition," "direct acquisition," and "assisted acquisitions" and moves the terms from FAR subparts 4.6 and 17.5 to FAR part 2. It also amends FAR subpart 8.4, Federal Supply Schedules, to add a cross reference to the requirements in subpart 17.5 for orders over $500,000 (a threshold established by statute).

In developing the rule, the Councils reviewed interagency guidance issued by the Office of Federal Procurement Policy at *http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf*.

The OMB guidance addresses procedures for the use of interagency acquisitions to maximize competition, deliver best value to executive agencies, and minimize waste, fraud, and abuse. In addition, as required by section 865(a), training on interagency acquisitions has been made available through the Federal Acquisition Institute (*see http://www.fai.gov/IAA/launchpage.htm*).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses. The rule is strengthening interagency acquisition procedures to achieve efficiencies and economies of scale across the Federal Government. The rule also requires agencies, in the multi-agency contract business-case analysis, to consider strategies to ensure small business participation during acquisition planning. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–47, FAR Case 2008–032) in all correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 865(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) required the publication of the regulations within one year after enactment, October 14, 2008. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 2, 4, 8, 9, 17, 18, 35, and 41

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 8, 9, 17, 18, 35, and 41 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 8, 9, 17, 18, 35, and 41 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by—

■ a. Adding, in alphabetical order, the definitions "Assisted acquisition", "Direct acquisition", and "Interagency acquisition";

■ b. Amending the definition "Multi-agency contract (MAC)" by removing "17.500(b)" and adding "17.502–2" in its place; and

■ c. Adding, in alphabetical order, the definitions "Requesting agency", and "Servicing agency".

The added text reads as follows:

**2.101 Definitions.**

* * * * *

(b) * * *

(2) * * *

*Assisted acquisition* means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency's behalf, such as awarding and

administering a contract, task order, or delivery order.

* * * * *

*Direct acquisition* means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.

* * * * *

*Interagency acquisition* means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency), by an assisted acquisition or a direct acquisition. The term includes—

(1) Acquisitions under the Economy Act (31 U.S.C. 1535); and

(2) Non-Economy Act acquisitions completed under other statutory authorities (*e.g.*, General Services Administration Federal Supply Schedules in subpart 8.4 and Governmentwide acquisition contracts (GWACs)).

* * * * *

*Requesting agency* means the agency that has the requirement for an interagency acquisition.

* * * * *

*Servicing agency* means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

### 4.601 [Amended]

■ 3. Amend section 4.601 by removing the definitions "Assisted acquisition", "Direct acquisition", "Requesting agency", and "Servicing agency".

## PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 4. Amend section 8.404 by revising paragraph (b) to read as follows:

### 8.404 Use of Federal Supply Schedules.

* * * * *

(b)(1) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(2) For orders over $500,000, *see* subpart 17.5 for additional requirements for interagency acquisitions. For example, the requiring agency shall make a determination that use of the Federal Supply Schedule is the best procurement approach, in accordance with 17.502–1(a).

* * * * *

## PART 9—CONTRACTOR QUALIFICATIONS

### 9.106–3 [Amended]

■ 5. Amend section 9.106–3 by removing the word "accommodated" and adding the words "accommodated (also *see* subpart 17.5)" in its place.

## PART 17—SPECIAL CONTRACTING METHODS

■ 6. Revise subpart 17.5 to read as follows:

## Subpart 17.5—Interagency Acquisitions

Sec.

17.500 Scope of subpart.
17.501 General.
17.502 Procedures.
17.502–1 General.
17.502–2 The Economy Act.
17.503 Ordering procedures.
17.504 Reporting requirements.

### 17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (b) of this section.

(b) This subpart does not apply to orders of $500,000 or less issued against Federal Supply Schedules.

### 17.501 General.

(a) Interagency acquisitions are commonly conducted through indefinite-delivery contracts, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support interagency acquisitions are Federal Supply Schedules (FSS), Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(b) An agency shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds.

(c) An interagency acquisition is not exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.

(d) An agency shall not use an interagency acquisition to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under title 40, United States Code, "Public Buildings, Property and Works" and title III of the Federal Property and Administrative Services Act of 1949.)

### 17.502 Procedures.

### 17.502–1 General.

(a) *Determination of best procurement approach*—(1) *Assisted acquisitions.* Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—

(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);

(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and

(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.

(2) *Direct acquisitions.* Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach. At a minimum, the determination shall include an analysis, including factors such as:

(i) The suitability of the contract vehicle;

(ii) The value of using the contract vehicle, including—

(A) The administrative cost savings from using an already existing contract;

(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and

(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

(b) *Written agreement on responsibility for management and administration*—(1) *Assisted acquisitions.* (i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a

written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract; for patent rights, *see* 27.304–2. In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at *http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf*.

(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with 4.801(b).

(2) *Direct acquisitions.* The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.

**17.502–2 The Economy Act.**

(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services by interagency acquisition. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are 40 U.S.C. 501 for the Federal Supply Schedules (subpart 8.4), and 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

(c) *Requirements for determinations and findings.* (1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall state that—

(i) Use of an interagency acquisition is in the best interest of the Government; and

(ii) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(2) If the Economy Act order requires contract action by the servicing agency, the D&F must also include a statement that at least one of the following circumstances applies:

(i) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.

(ii) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(iii) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(3) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

(4) The requesting agency shall furnish a copy of the D&F to the servicing agency with the order.

(d) *Business-case analysis requirements for multi-agency contracts.* In order to establish a multi-agency contract in accordance with Economy Act authority, a business-case analysis must be prepared by the servicing agency. The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (*see* 7.103(s));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, e.g., will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

(e) *Payment.* (1) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(3) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(4) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

**17.503 Ordering procedures.**

(a) Before placing an order for supplies or services with another Government agency, the requesting agency shall follow the procedures in 17.502–1 and, if under the Economy Act, also 17.502–2.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (*see* 17.502–2(e) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (*see* 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502–2(c)) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including—

(i) Having adequate statutory authority for the contractual action; and

(ii) Complying fully with the competition requirements of part 6 (*see* 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (*See* 35.017; *see also* 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

**17.504 Reporting requirements.**

The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

## PART 18—EMERGENCY ACQUISITIONS

■ 7. Amend section 18.113 by revising the section heading to read as follows:

**18.113 Interagency acquisitions.**

* * * * *

## PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

■ 8. Amend section 35.017–3 by revising the second sentence of paragraph (b) to read as follows:

**35.017–3 Using an FFRDC.**

* * * * *

(b) * * * The nonsponsoring agency is responsible for making the determination required by 17.502–2(c) and providing the documentation required by 17.503(e). * * *

## PART 41—ACQUISITION OF UTILITY SERVICES

■ 9. Revise section 41.206 to read as follows:

**41.206 Interagency agreements.**

Agencies shall use interagency agreements (e.g., consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at 17.502–2, The Economy Act.

[FR Doc. 2010–30561 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 2, 19, and 52

**[FAC 2005–47; FAR Case 2009–019; Item IV; Docket 2010–0108, Sequence 1]**

**RIN 9000–AL77**

## Federal Acquisition Regulation; Small Disadvantaged Business Self-Certification

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate changes made by the Small Business Administration (SBA) to its Small Disadvantaged Business (SDB) Program.

**DATES:** *Effective Date:* December 13, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–47, FAR Case 2009–019, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–019" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009–019." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–019" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–47, FAR Case 2009–019, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–47, FAR Case 2009–019.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule amends the FAR to allow subcontractors on Federal contracts to self-represent their status as SDBs to prime contractors. SBA published an interim final rule in the **Federal Register** at 73 FR 57490, October 3, 2008, to allow SDB subcontractors to provide written statements to prime contractors representing in good faith their status as an SDB concern for the purposes of subcontract awards under Federal prime contracts. Under SBA's previous regulation, only those firms that were certified by SBA as SDBs could participate as SDBs for Federal prime contract and subcontract opportunities. SBA stated that, effective October 3, 2008, it would no longer serve as a source for SDB certification for firms seeking to establish themselves as SDBs. The revision to SBA's regulation removed any uncertainty regarding SDB subcontractors' ability to self-represent themselves in good faith to prime contractors.

In order to maintain consistency between the SBA regulations and the FAR, the Councils are amending the FAR as outlined below:

- FAR 2.101, Definitions: The term "small disadvantaged business concern" is revised to be consistent with 13 CFR part 124, which continues to recognize small business concerns that have been certified by SBA, and to add language that allows small business concerns to self-represent their status as SDBs for subcontracts.
- FAR 19.301–1, Representations by the offeror: Amended to update citations.
- FAR 19.703, Eligibility requirements for participating in the

program: Amended to add language that allows the contractor to rely on small business concerns to self-represent their status as SDBs for subcontracts.

- FAR 52.219–8, Utilization of Small Business Concerns: Amended to include language that the small business concern can self-represent its SDB status in writing.
- FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting: Amended to allow the contractor to accept written self-representations of small disadvantaged status from subcontractors.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of the Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this revision removes a requirement for SDBs to obtain SBA SDB certification prior to award of a subcontract. This change will be beneficial to SDBs because they will no longer have to incur the cost associated with a formal certification process. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–47, FAR Case 2009–019) in all correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the FAR currently prohibits small business concerns that are not certified by the SBA from participating as SDB concerns for subcontracting. This interim rule implements changes promulgated by the SBA and is necessary for the FAR to be consistent with SBA's regulations pertaining to SDB certifications. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 2, 19, and 52**

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2), in the definition "Small disadvantaged business concern", by—

■ a. Revising the introductory text and paragraph (1)(iii);

■ b. Amending paragraph (2) by removing the period at the end of the paragraph and adding a semicolon in its place; and

■ c. Adding paragraph (3).

The revised and added text reads as follows:

**2.101 Definitions.**

* * * * *

(b) * * *

(2) * * *

*Small disadvantaged business concern* (except for 52.212–3(c)(4) and 52.219–1(b)(2) for general statistical purposes and 52.212–3(c)(9)(ii), 52.219–22(b)(2), 52.219–22(b)(1)(C), and 52.219–23(a)(3) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), consistent with 13 CFR 124.1002, means an offeror, that is a small business under the size standard applicable to the acquisition; and either—

(1) * * *

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the CCR Dynamic Small Business Search data base maintained by the Small Business Administration;

* * * * *

(3) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

* * * * *

## PART 19—SMALL BUSINESS PROGRAMS

**19.301–1 [Amended]**

■ 3. Amend section 19.301–1 in paragraph (d), in the last sentence, by removing "13 CFR 124.1011" and adding "13 CFR 124.1004" in its place.

■ 4. Amend section 19.703 by removing from paragraph (a)(1) "HUBZone small business," and adding "HUBZone small business, small disadvantaged business," in its place; removing from paragraph (a)(2), in the second sentence, "13 CFR 124.1015 through 124.1022" and adding "13 CFR 124.1007 through 124.1014" in its place; and revising paragraph (b) to read as follows:

**19.703 Eligibility requirements for participating in the program.**

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business concern. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1001 through 121.1008. Protests challenging a subcontractor's small disadvantaged business representation must be filed in accordance with 13 CFR 124.1007 through 124.1014.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–5 by revising the date of the clause; removing from paragraph (b)(11) "(MAY 2004)", and adding "(DEC 2010)" in its place; removing from paragraph (e)(1)(ii) "(October 2000)", and adding "(DEC

2010)" in its place; revising the date of Alternate II; and removing from Alternate II, paragraph (e)(1)(ii)(C) "(MAY 2004)" and adding "(DEC 2010)" in its place.

The revised text reads as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

* * * * *

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DEC 2010)**

* * * * *

*Alternate II (DEC 2010).* * * *

* * * * *

■ 6. Amend section 52.213–4 by revising the date of the clause, and paragraph (a)(2)(vii) to read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

* * * * *

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEC 2010)**

(a) * * *

(2) * * *

(vii) 52.244–6, Subcontracts for Commercial Items (DEC 2010).

* * * * *

■ 7. Amend section 52.219–8 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (c), in the definition "Small disadvantaged business concern", by redesignating paragraphs (1) through (4) as paragraphs (1)(i) through (iv), respectively, and revising the newly redesignated paragraph (1)(iv); and adding paragraph (2).

The revised and added text reads as follows:

**52.219–8 Utilization of Small Business Concerns.**

* * * * *

**Utilization of Small Business Concerns (DEC 2010)**

* * * * *

(c) * * *

* * * * *

*Small disadvantaged business concern* * * *

(1)(i) * * *

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

* * * * *

■ 8. Amend section 52.219–25 by revising the date of the clause; revising the second sentence of paragraph (a); redesignating paragraph (b) as paragraph (c); and adding a new paragraph (b) to read as follows:

**52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.**

* * * * *

**Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (DEC 2010)**

(a) * * * The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors (see exception in paragraph (b) of this section) through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219–22, Small Disadvantaged Business Status. * * *

(b) For subcontractors that are not certified as a small disadvantaged business by the Small Business Administration, the Contractor shall accept the subcontractor's written self-representation as a small disadvantaged business, unless the Contractor has reason to question the self-representation.

* * * * *

■ 9. Amend section 52.244–6 by revising the date of the clause; and removing from paragraph (c)(1)(iii) "(MAY 2004)" and adding "(DEC 2010)" in its place.

The revised text reads as follows:

**52.244–6 Subcontracts for Commercial Items.**

* * * * *

**Subcontracts for Commercial Items (DEC 2010)**

* * * * *

[FR Doc. 2010–30563 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 9 and 52

**[FAC 2005–47; FAR Case 2009–036; Item V; Docket 2010–0109, Sequence 1]**

**RIN 9000–AL75**

## Federal Acquisition Regulation; Uniform Suspension and Debarment Requirement

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010. Section 815 extends the flowdown of the restriction on subcontracting to lower tier subcontractors that have been suspended or debarred, with some exceptions for contracts for the acquisition of commercial items and commercially available off-the-shelf items.

**DATES:** *Effective Date:* December 13, 2010.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before February 11, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–47, FAR Case 2009–036, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–036" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–036". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–036" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAC 2005–47, FAR Case 2009–036, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Millisa Gary, Procurement Analyst, at (202) 501–0699. Please cite FAC 2005–47, FAR Case 2009–036. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule revises the FAR to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). Section 815 amends section 2455(c)(1) of the Federal Acquisition Streamlining Act of 1994 (31 U.S.C. 6101 note) by amending the definition of "procurement activities" to include subcontracts at any tier, except—

- It does not include subcontracts for commercially available off-the-shelf (COTS) items; and
- In the case of commercial items, such term includes only the first-tier subcontracts.

This has the effect, except for COTS items, of expanding the requirement of 2455(a), which states that "No agency shall allow a party to participate in any procurement * * * activity if any agency has debarred, suspended, or otherwise excluded * * * that party from participation in a procurement * * * activity."

Prime contractors will not be restricted from subcontracts with suspended or debarred entities for COTS items; subcontractors for COTS items will not be required to disclose to the prime contractor whether the subcontractor, or any of its principals, is debarred, suspended, or proposed for debarment at the time of subcontract award.

This interim rule amends—

(1) FAR 9.405–2 to exclude COTS items from the restrictions on subcontracting with contractors that have been debarred, suspended, or proposed for debarment;

(2) The clause at FAR 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, by flowing down the requirements to check whether a subcontractor is suspended or debarred beyond the first-tier, with the stated exceptions for COTS items; and

(3) The clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, because the requirement that commercial contracts must flow the requirement down to the first-tier is now statutory.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The rule removes the current requirements relating to subcontracts for COTS items, and in the case of commercial items, the requirement extends only to the first-tier subcontracts. This rule will impact small entities that are awarded a lower-tier subcontract for a non-COTS item that exceeds $30,000, in that these entities must now disclose to the higher-tier subcontractor whether they are suspended, debarred, or proposed for suspension. Although a substantial number of small entities may be impacted by this rule, the impact is not significant. It will likely only take one minute to include the required information with an offer. For the other impact of the rule, which will require the higher-tier subcontractor to provide an explanation if desiring to subcontract with an entity that has been debarred, suspended, or proposed for debarment, the Councils do not expect this requirement to impact a substantial number of small entities, because it would only be in rare circumstances that a subcontractor would potentially jeopardize performance or integrity by knowingly contracting with an entity that is debarred, suspended or proposed for debarment. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–47, FAR Case 2008–036) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does apply; however, these changes to the FAR only impose minimal additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0094. Because the change in burden hours is so slight, no new approval by OMB is required.

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of Section 815 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), effective October 28, 2009. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 9 and 52**

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 9 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 9 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 9.405–2 by revising paragraph (b) introductory text to read as follows:

**9.405–2 Restrictions on subcontracting.**

* * * * *

(b) The Government suspends or debars contractors to protect the Government's interests. By operation of the clause at 52.209–6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment, contractors shall not enter into any subcontract in excess of $30,000, other than a subcontract for a commercially available off-the-shelf

item, with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract, other than a subcontract for a commercially available off-the-shelf item, with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion in the EPLS (*see* 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209–6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. For contracts for the acquisition of commercial items, the notification requirement applies only for first-tier subcontracts. For all other contracts, the notification requirement applies to subcontracts at any tier. The notice must provide the following:

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.209–6 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d), respectively; and adding a new paragraph (a);
■ c. Revising the newly designated paragraphs (b), (c), and (d) introductory text; and
■ d. Adding paragraph (e).

The revised and added text reads as follows:

**52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.**

* * * * *

**Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010)**

(a) *Definition. Commercially available off-the-shelf (COTS)* item, as used in this clause—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of $30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (*see* FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

* * * * *

(e) *Subcontracts.* Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceeds $30,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

(End of clause)

■ 4. Amend section 52.212–5 by—
■ a. Revising the date of the clause; and
■ b. Redesignating paragraphs (b)(6) through (b)(44) as paragraphs (b)(7) through (b)(45), respectively; and adding a new paragraph (b)(6).

The revised and added text reads as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

* * * * *

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DEC 2010)**

(b) * * *

(6) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) (31 U.S.C. 6101 note). (Applies to contracts over $30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

* * * * *

■ 5. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(2)(i) to read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

* * * * *

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEC 2010)**

(b) * * *

(2) * * *

(i) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) (Applies to contracts over $30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

* * * * *

[FR Doc. 2010–30565 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 15, 31, and 52

**[FAC 2005–47; FAR Case 2008–031; Item VI; Docket 2009–0034, Sequence 2]**

**RIN 9000–AL27**

## Federal Acquisition Regulation; Limitation on Pass-Through Charges

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, which applies to executive agencies other than DoD. DoD is subject to section 852 of the John Warner NDAA for FY 2007, which is also implemented in this final rule. Section 866 requires the Councils to amend the FAR, and section 852 requires the Secretary of Defense to prescribe regulations to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by

a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value.

**DATES:** *Effective Date:* January 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–47, FAR Case 2008–031.

**SUPPLEMENTARY INFORMATION:**

## A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 74 FR 52853, October 14, 2009, to implement section 866 of the Duncan Hunter NDAA for FY 2009 (Pub. L. 110–417) as well as section 852 of the John Warner NDAA for FY 2007 (Pub. L. 109–364). These acts required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a higher-tier subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the contractor or higher-tier subcontractor adds no or negligible value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work. Seventy percent was selected as the threshold for this information reporting requirement, because it represents a substantial amount of subcontracting.

To ensure that the Government can make a determination as to whether or not pass-through charges are excessive, the interim rule incorporated a reporting threshold that affords the contracting officer the ability to understand what functions the contractor will perform (*e.g.*, consistent with the contractor's disclosed practice) and thus will provide added value, whether it be before award, or if the contractor subsequently decides to subcontract substantially all of the effort. The rule provides a recovery mechanism for the excessive pass-through charges for those situations in which a contractor subcontracts all, or substantially all, of the performance of the contract, and does not perform the subcontract management functions, or other value-added functions, that were charged to the Government through indirect costs and related profit/fee.

The final rule adopts the interim rule with a minor change involving the addition of two types of fixed-price incentive contracts to the list of contracts at FAR 15.408(n)(2)(i)(B)(2) for DoD that are not subject to the limitation on pass-through charges clauses. These additions are fixed-price incentive contracts awarded on the basis of adequate price competition and fixed-price incentive contracts for the acquisition of a commercial item. Section 852 of the John Warner NDAA for FY 2007 (Pub. L. 109–364) is clear that DoD contracts awarded on the basis of adequate price competition, and DoD contracts for the acquisition of a commercial item are not subject to the limitation on pass-through charges.

## B. Discussion and Analysis

The FAR Secretariat received five responses to the interim rule. These responses included a total of 31 comments on 23 issues. Each issue is discussed in the following sections.

*Issue 1:* Three respondents expressed their support for the interim rule with one respondent stating that they were in favor of companies being responsible, responsive, and capable of providing adequate management systems to track the level of subcontracting taking place under specific contracts.

*Response:* The Councils acknowledge their support for the interim rule.

*Issue 2:* One respondent recommended that guidance should be provided to assist contracting officers with implementing the rule. The respondent cited several examples of what should be in that guidance.

*Response:* The Councils disagree with the inclusion of such implementation guidance in the FAR. Agencies will provide supplemental guidance and training to implement this rule, as appropriate.

*Issue 3:* One respondent recommended that the clause language incorporate GAO recommendations relative to "requiring contracting officials to take risk into account when determining the degree of assessment needed."

*Response:* The Councils do not concur. The respondent's recommendation goes to procedures for assessing contractor value added. Such procedures are beyond the scope of this case, and reasonably should be implemented through agency guidance.

*Issue 4:* One respondent recommended that the final rule be written such as to "serve as a tool to ensure consistency to the extent practicable between contractor's proposals and actual performance rather than to serve as a basis to disallow cost after incurrence."

*Response:* The Councils do not concur with the respondent's recommendation. Unless otherwise required under the contract, contractors have the right to revise and manage workload under the contract as they see fit. The clauses provide sufficient protection to the Government for such cases where the contractor revises the workload from what had been negotiated to a situation where excessive pass-through charges exist.

*Issue 5:* One respondent recommended that the final rule be written such as to "carefully consider the potential effects on those small businesses performing as prime contractors on contract set-asides given that small business prime contractors could experience significant financial impacts as a result of disallowed pass-through costs under this rule."

*Response:* The Councils do not concur with the respondent's recommendation. Section 866 of the FY 2009 NDAA does not set forth an exclusion for small businesses under this rule.

*Issue 6:* One respondent recommended that the final rule should reconcile DoD policies to avoid confusion. Specifically, they assert that the Wynne memorandum dated July 12, 2004, and the policies enacted in the Weapons Systems Acquisition Reform Act of 2009 are contrary to this rule, which "exerts pressure on contracting officials to keep work in-house to address the reporting requirement."

*Response:* The Councils do not concur with the respondent's recommendation. The Councils do not agree that there are conflicts between this rule and DoD policy. Competition and teaming arrangements are not hindered by this regulation, and subcontracting efforts are not limited to 70 percent of the total effort. The 70 percent threshold triggers an information reporting requirement. This rule is emphasizing that value is to be added by the contractor to the subcontracted effort.

*Issue 7:* One respondent recommended that "a distinction be made with regard to G&A applied to contracts versus applied profit. This will serve to protect the contractor's recovery of allowable G&A if incurred in accordance with CAS and the contractor's disclosed practices, while focusing the Government's attention to the negotiated item of profit."

*Response:* The Councils do not concur with the respondent's recommendation. The Councils disagree that a distinction should be made with regard to G&A applied to contracts versus applied profit because the statutes prohibit application of overhead to excessive pass-through charges, as well as profit.

*Issue 8:* One respondent recommended that the rule should use the threshold in FAR 15.403–4 to ensure a consistent minimum threshold among all executive agencies in lieu of multiple thresholds currently in the rule. The respondent believed that if the Councils utilize the threshold in FAR 15.404–4, the rule "will exclude a significant number of subcontracts from this burdensome requirement but still cover the vast majority of the total value of subcontracts."

*Response:* The Councils do not concur with the respondent's recommendation. By statute, civilian agencies are required to establish the threshold at the simplified acquisition threshold, while DoD established its threshold at the threshold for obtaining cost or pricing data in FAR 15.403–4.

*Issue 9:* One respondent recommended that the provision and clause be amended to include definitions of "total cost of the work" and "total cost of work". As such, the respondent recommended that "FAR 52.215–22 be amended to provide that, for purposes of determining whether the 70 percent subcontracting threshold is reached, the 'total cost of the work' to be performed by the prime contractor or a higher-tier subcontractor shall include the prime contractor's or higher-tier subcontractor's direct and indirect costs of the work, excluding applicable profit or fee, to be performed under the contract or higher-tier subcontractor, as the case may be, and the 'total cost of the work' to be performed by each subcontractor to the prime contractor or to a higher-tier subcontractor shall include its direct and indirect costs, including applicable profit or fee, of the work to be performed under its subcontract." Also, the respondent recommended that "FAR 52.215–23 be amended to provide that, for purposes of determining whether a prime contractor, or higher-tier subcontractor, changes the amount of subcontractor effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contractor or higher-tier subcontractor, the 'total cost of the work' to be performed by the prime contractor or higher-tier subcontractor under the contract or higher-tier subcontractor shall include the contractor's or higher-tier subcontractor's direct and indirect costs of the work, excluding applicable profit or fee, to be performed under the contract or higher-tier subcontractor, as the case may be, and the 'total cost of the work' to be performed by each subcontractor to the prime contractor or to a higher-tier subcontractor shall include its direct and indirect costs, including applicable profit or fee, of the work to be performed under its subcontract."

*Response:* The Councils do not concur with the respondent's recommendation. The Councils believe that the respondent's recommended definitions are not necessary, as they are universally understood within the acquisition community.

*Issue 10:* Two respondents believed that the determination of value-added work be performed before contract award and not during contract performance. One respondent recommended that "the rule be placed in FAR Part 15 (for example, in 15.404–1, Proposal Analysis) rather than in a clause to affirm and emphasize the basic contract formation policy that contracts should not be entered into where the contracting officer determines after a thorough proposal analysis that an offeror adds no or negligible value to the proposed acquisition." The respondent believed that the pass-through rule, as currently written, "would unfairly continue to subject contractors to continuing post-award reviews by the government of pass-through charges and potential disallowances throughout the life of the contract which is unjustified, inappropriate, onerous, and not required by sections 866 or 852 of the NDAAs." Similarly, another respondent recommended that FAR 52.215–23 be changed to add language from Alternate I to the standard clause, thus, mandating that contracting officers determine prior to award that the contractor will add value. The respondent also recommended that FAR 52.215–23(c) be changed "to require the contracting officer to make a determination as to whether the contractor will, in fact, provide 'added value', thereby putting the contractor on notice as to whether it can apply indirect costs and profit to work performed by subcontractors." This determination should be required to be made in a reasonable time not to exceed 30 days and if no determination made by 30 days, consider work to be value-added.

*Response:* The Councils do not concur with the respondent's recommendations. The statute's requirements are not limited only to pre-award restrictions, but instead set forth the requirements to ensure that neither a contractor nor a subcontractor receives indirect costs or profit on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no or negligible value at any time.

*Issue 11:* One respondent recommended that the final rule include an exemption for cost accounting standard (CAS)-covered contracts since allocability and allowability of pass-through charges are already covered in CAS and cost principles.

*Response:* The Councils do not concur with the respondent's recommendation. The statutes do not set forth an exclusion for CAS-covered contracts. Furthermore, CAS does not ensure that the Government does not pay excessive pass-through charges as required by the statutes.

*Issue 12:* One respondent recommended that the final rule include an exemption for contracts issued subject to the Truth In Negotiations Act (TINA) requirements since already existing cost or pricing data requirements would provide necessary data relative to pass-through charges.

*Response:* The Councils do not concur with the respondent's recommendation. The statutes do not set forth an exclusion for contracts subject to TINA. Furthermore, TINA does not ensure that the Government does not pay excessive pass-through charges as required by the statutes.

*Issue 13:* Two respondents recommended that the final rule include an exemption for all commercial item acquisitions since, as currently written, commercial items/services procured by DoD through time-and-materials or labor-hour contracts could be subject to the pass-through clause. One of these respondents believed that applying these requirements to commercial contracts would be unnecessary; contrary to TINA; inconsistent with the Federal Acquisition Streamlining Act, as well as the Services Acquisition Reform Act; and exceed Congressional authority.

*Response:* The Councils do not concur with these respondents' recommendations. The statutes do not set forth an exemption for commercial item/service time-and-materials or labor-hour contracts. Furthermore, the Councils do not believe it would be within the spirit of the statute to implement such exemptions.

*Issue 14:* Two respondents recommended that FAR 52.215–23(e) be removed as redundant or re-worded to specifically address what additional records or data the contracting officer requires access to that is not currently addressed by FAR 52.215–2.

*Response:* The Councils do not concur with the respondent's recommendation. The audit and records FAR clause at 52.215–2 does not provide access to all of the necessary records to show excessive pass-through charges. The final rule maintains the access to records FAR provision at 52.215–23(e) because it is needed to fully implement the statutes and ensure that the Government is not paying excessive pass-through charges.

*Issue 15:* One respondent recommended that the 70 percent threshold be raised to 90 percent which reflects the level initially contemplated by Congress in the Senate version of the bill (section 844 of S2766). The respondent believed there was no basis for the 70 percent threshold.

*Response:* The Councils disagree with this recommendation. As permitted by section 852 of the "John Warner NDAA for FY 2007", the Councils have identified 70 percent as the threshold whereby a greater risk is assumed by the Government in paying excessive pass-through charges. The Councils consider this 70 percent threshold reasonable, because it affords the parties an opportunity to address subcontracting management requirements above this level in more detail and to ensure the contracting officer is able to determine the disclosed subcontract management functions are of benefit to the Government. The statute requires that the Government not pay excessive pass-through charges on any contract, subcontract, or order.

*Issue 16:* One respondent recommended that the flowdown provisions of the solicitation provision and clause be limited to first-tier subcontractors. The respondent believed that there was little benefit in micro-managing pass-through charges deep into the supply chain.

*Response:* The Councils do not concur with the respondent's recommendation. It is very apparent from the language of the statutes that Congressional intent is to flow down this requirement beyond the first tier-subcontract level.

*Issue 17:* One respondent recommends that the final rule include a set of narrowly defined definitions for all key terms, such as, but not limited to "no or negligible value", "substantial value", and "added value".

*Response:* In general, the Councils do not concur with the respondent's recommendation. The Councils believe that the respondent's recommended definitions are not necessary, as they are universally understood within the acquisition community. However, the rule does provide definitions of five of the more commonly understood terms, including "no or negligible value" and "added value".

*Issue 18:* One respondent recommended that the definition of "added value" in FAR 52.215–23(a), where "*e.g.*" is included in parentheses, be changed to "including, but not limited to".

*Response:* The Councils do not concur with the respondent's recommendation. The term "*e.g.*" means for example, which does not imply that these functions are all inclusive.

*Issue 19:* One respondent recommended that the pass-through provision and clause be limited to only sole source contracts (firm-fixed-price, time and materials, or otherwise) below the TINA threshold.

*Response:* The Councils do not concur with the respondent's recommendation. The statutes do not limit implementation of the requirements on such a limited basis.

*Issue 20:* One respondent recommended that the intent of FAR 52.215–23(d) be clarified since, as written, it is an open invitation to contracting officers to revisit contract terms and price agreements after the fact, which is unfair and unproductive, and further be clarified as to how this section will be implemented in light of other contract compliance requirements and/or other operative contract clauses.

*Response:* The Councils do not concur with the respondent's recommendation. This is not an invitation to revisit contract terms or price agreements. This is a compliance function performed under, and in conjunction with, standard contract administration.

*Issue 21:* One respondent recommended that the final rule specifically address small business goals. The respondent did not want to have the rule inadvertently discourage substantial subcontracting to small firms that do provide value added solutions. In general, the respondent recommended clarifying intent and wording of the final rule to prevent contracting officers from leaving out legitimate small firms or discouraging prime contractors from subcontracting. Specifically, the respondent recommended that the following language be added to the rule, "not intended to penalize companies with substantial small business goals that may on individual task orders exceed 70 percent".

*Response:* The Councils disagree with including the respondent's recommended language. It is not the Government's intention to establish a disincentive for a company from achieving their small business subcontractor goals. This rule merely requires that the Government not pay excessive pass-through charges to contractors who add no or negligible value. The contracting officer has the discretion to make the determination whether the contractor has added value.

*Issue 22:* One respondent recommended that the definition of value-added at FAR 52.215–23(a) be "expanded to include all activities with respect to subcontractor sourcing, selection, negotiation, and administration that facilitate performance of services and delivery of goods to the Government and reduce Government's risk."

*Response:* The Councils disagree. The recommended language is too broad and does not adhere to the intent of the statute. The interim rule language provided examples for the contracting officer to consider, but ultimately this is a contracting officer determination.

*Issue 23:* One respondent recommended that the Defense Federal Acquisition Regulation Supplement (DFARS) language in the second interim rule that was published in the **Federal Register** at 73 FR 27464, May 13, 2008, be eliminated since it is no longer required based upon this rule.

*Response:* Although this comment is outside the scope of this case, the language has been removed from the DFARS (DFARS Case 2006–D057, 75 FR 48278, effective August 10, 2010).

### C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because we do not expect a significant number of entities to propose excessive pass-through charges under contracts or subcontracts, and the information required from offerors and contractors regarding pass-through charges is minimal.

### E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to

the paperwork burden previously approved under OMB Control Number 9000–0173.

**List of Subjects in 48 CFR Parts 15, 31, and 52**

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

**Interim Rule Adopted as Final With Changes**

■ Accordingly, the interim rule amending 48 CFR parts 15, 31, and 52, which was published in the **Federal Register** at 74 FR 52853, October 14, 2009, is adopted as final with the following changes:

## PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.408 by—
■ a. Removing from paragraph (n)(2)(i)(B)(*2*)(*iii*) the word "or";
■ b. Removing the period from the end of paragraph (n)(2)(i)(B)(*2*)(*iv*) and adding a semicolon in its place; and
■ c. Adding paragraphs (n)(2)(i)(B)(*2*)(*v*) and (n)(2)(i)(B)(*2*)(*vi*) to read as follows:

**15.408 Solicitation provisions and contract clauses.**

* * * * *

(n) * * *

(2)(i) * * *

(B) * * *

(*2*) * * *

(*v*) A fixed-price incentive contract awarded on the basis of adequate price competition; or

(*vi*) A fixed-price incentive contract for the acquisition of a commercial item.

[FR Doc. 2010–30566 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

---

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 3, 5, 7, and 10

**[FAC 2005–47; Item VII; Docket 2010–0110, Sequence 1]**

### Federal Acquisition Regulation; Technical Amendments

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

**DATES:** *Effective Date:* December 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, 1275 First St., NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–47, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** This document makes amendments to the Federal Acquisition Regulation (FAR) in 48 CFR parts 3, 5, 7, and 10 for purposes of updating.

**List of Subjects in 48 CFR Parts 3, 5, 7, and 10**

Government procurement.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 5, 7, and 10 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 5, 7, and 10 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

**3.104–1 [Amended]**

■ 2. Amend section 3.104–1 by removing from the definition "Federal agency procurement," in the second sentence, the word "innovative" and adding the word "innovation" in its place.

## PART 5—PUBLICIZING CONTRACT ACTIONS

**5.601 [Amended]**

■ 3. Amend section 5.601 by removing from paragraphs (a), (b)(1), and (b)(2) "*http://www.contractdirectory.gov*" and adding "*http://www.contractdirectory.gov/contractdirectory/*" in its place.

## PART 7—ACQUISITION PLANNING

**7.105 [Amended]**

■ 4. Amend section 7.105 by removing from paragraph (b)(1), in the second sentence, "*http://www.contractdirectory.gov*" and adding "*http://www.contractdirectory.gov/contractdirectory/*" in its place.

## PART 10—MARKET RESEARCH

**10.002 [Amended]**

■ 5. Amend section 10.002 by removing from paragraph (b)(2)(iv) "*http://www.contractdirectory.gov*" and adding "*http://www.contractdirectory.gov/contractdirectory/*" in its place.

[FR Doc. 2010–30567 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

---

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Chapter 1

**[Docket FAR 2010–0077, Sequence 9]**

### Federal Acquisition Regulation; Federal Acquisition Circular 2005–47; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–47, which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been performed. Interested parties may obtain further information regarding these rules by referring to FAC 2005–47, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

**DATES:** For effective dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below. Please cite FAC 2005–47 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–47

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| I | Notification of Employee Rights Under the National Labor Relations Act (Interim) | 2010–006 | McFadden. |
| II | HUBZone Program Revisions | 2006–005 | Morgan. |
| III | Preventing Abuse of Interagency Contracts (Interim) | 2008–032 | Sakalos. |
| IV | Small Disadvantaged Business Self-Certification (Interim) | 2009–019 | Morgan. |
| V | Uniform Suspension and Debarment Requirement (Interim) | 2009–036 | Gary. |
| VI | Limitation on Pass-Through Charges | 2008–031 | Chambers. |
| VII | Technical Amendments. | | |

**SUPPLEMENTARY INFORMATION:**
Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–47 amends the FAR as specified below:

**Item I—Notification of Employee Rights Under the National Labor Relations Act (FAR Case 2010–006) (Interim)**

This interim rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws, as implemented by the Department of Labor (DoL). The Executive order requires contractors and subcontractors to post a notice that includes employee rights under the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, and protects the exercise by employees of their freedom to associate, to self organize and to designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. This FAR interim rule establishes a new subpart 22.16, Notification of Employee Rights under the National Labor Relations Act. The rule also creates a new FAR clause 52.222–40, Notification of Employee Rights under the National Labor Relations Act. In addition, this rule revises the FAR clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244–6, Subcontracts for Commercial Items, to include the requirements of the new FAR clause 52.222–40. The required employee notice, "Notification of Employee Rights Under the National Labor Relations Act," may be obtained from the DoL; downloaded from a DoL Web site; provided by the Federal contracting agency, if requested; or reproduced and used as exact duplicate copies of the DoL's official poster (*see* FAR 52.222–40(c)). Contracting officers shall insert the clause at FAR 52.222–40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

A contracting agency may modify the clause at FAR 52.222–40, if necessary, to reflect an exemption granted by the Secretary of the Department of Labor (*see* 22.1603(b)).

**Item II—HUBZone Program Revisions (FAR Case 2006–005)**

This FAR final rule implements the Small Business Administration (SBA) final rule published in the **Federal Register** at 69 FR 29411 on May 24, 2004, and an interim rule published in the **Federal Register** at 70 FR 51243 on August 30, 2005, amending its HUBZone regulations at 13 CFR part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act of 2005, and other various policy changes. The FAR is amended to—

(1) Require a HUBZone small business concern to be a HUBZone small business concern both at the time of its initial offer and at the time of contract award;

(2) Require that HUBZone concerns provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility.

(3) *Allow waiver of the 50 percent requirement.* In accordance with 13 CFR 126.700, for general construction or construction by special trade contractors, a HUBZone small business concern must spend at least 50 percent of the cost of contract performance incurred for personnel on its own employees or subcontract employees of other HUBZone small business concerns. This final rule amends FAR clause 52.219–3, Notice of Total HUBZone Set-Aside, and FAR clause 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, to include an Alternate I, to be used to waive the 50 percent requirement only after determining that at least two HUBZone small business concerns cannot meet the requirement. However, the HUBZone small business prime contractor must still meet the performance of work requirements set forth in 13 CFR 125.6(c).

**Item III—Preventing Abuse of Interagency Contracts (FAR Case 2008–032) (Interim)**

This interim rule implements section 865 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. FAR subpart 17.5 now addresses all interagency acquisitions, not just those made under the Economy Act authority. A new subsection 17.502–1 is added to require that all interagency acquisitions include a determination of best procurement approach. For an assisted acquisition between the servicing agency and the requesting agency, this subsection now requires a written agreement that establishes the general terms and conditions governing the relationship between the parties. Subsection 17.502–2 contains business-case analysis requirements when an agency wishes to establish a contract that would be used by other agencies. There is a statutory exception included in subpart 17.5 for orders of $500,000 or less issued against Federal Supply Schedules.

**Item IV—Small Disadvantaged Business Program Self-Certification of Subcontractors (FAR Case 2009–019) (Interim)**

This interim rule amends the FAR by allowing small disadvantaged businesses (SDBs) to self-represent their SDB status to prime contractors in good faith when seeking Federal subcontracting opportunities. This change implements revisions made by

the Small Business Administration (SBA) to its SDB regulations. This case only addresses the subcontracting status portion of the SBA final rule for Small Disadvantaged Business certification. The Small Disadvantaged Business certification for prime contracts will be addressed in a future rule. This change removes a cost of compliance burden on SDB subcontractors seeking SBA certification.

**Item V—Uniform Suspension and Debarment Requirement (FAR Case 2009–036) (Interim)**

This interim rule amends the FAR at parts 9 and 52 to implement section 815 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84. The law requires that suspension and debarment requirements flow down to all subcontracts except contracts for the acquisition of commercially available off-the-shelf items, and in the case of contracts for the acquisition of commercial items, first-tier subcontracts only.

This requirement will protect the Government against contracting with entities at any tier who are suspended, debarred or proposed for debarment. This rule does not have a significant impact on the Government, contractors or any automated systems.

**Item VI—Limitations on Pass-Through Charges (FAR Case 2008–031)**

This final rule adopts the interim rule published in the **Federal Register** at 74 FR 52853, October 14, 2009, as a final rule with minor changes.

The interim rule amended the FAR to implement section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110–417) and section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109–364). This legislation required the Councils to amend the FAR to minimize excessive pass-through charges by contractors from subcontractors, or from tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

**Item VII—Technical Amendments**

Editorial changes are made at FAR 3.104–1, 5.601, 7.105, and 10.002.

Dated: November 24, 2010.

**Millisa Gary,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 2010–30568 Filed 12–10–10; 8:45 am]

BILLING CODE 6820–EP–P

# Reader Aids

Federal Register

Vol. 75, No. 238

Monday, December 13, 2010

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | 202–741–6000 |
| **Laws** | 741–6000 |
| **Presidential Documents** | |
| Executive orders and proclamations | 741–6000 |
| **The United States Government Manual** | 741–6000 |
| **Other Services** | |
| Electronic and on-line services (voice) | 741–6020 |
| Privacy Act Compilation | 741–6064 |
| Public Laws Update Service (numbers, dates, etc.) | 741–6043 |
| TTY for the deaf-and-hard-of-hearing | 741–6086 |

### ELECTRONIC RESEARCH

**World Wide Web**

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

**E-mail**

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

## FEDERAL REGISTER PAGES AND DATE, DECEMBER

74605–75144 ..... 1
75145–75362 ..... 2
75363–75618 ..... 3
75619–75844 ..... 6
75845–76250 ..... 7
76251–76610 ..... 8
76611–76920 ..... 9
76921–77520 ..... 10
77521–77748 ..... 13

## CFR PARTS AFFECTED DURING DECEMBER

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:**
8606 ..... 74605
8607 ..... 75613
8608 ..... 75615
8609 ..... 75617
8610 ..... 75845
8611 ..... 75847
8612 ..... 76251
8613 ..... 76611
8614 ..... 76613
8615 ..... 77519

**Administrative Orders:**
Presidential Determinations:
No. 2011-01 of October 6, 2010 ..... 75849
No. 2011-02 of October 8, 2010 ..... 75851
No. 2011-03 of October 15, 2010 ..... 75853
No. 2011-04 of October 25, 2010 ..... 75855
No. 2011-05 of November 19, 2010 ..... 75865

### 5 CFR

630 ..... 75363
890 ..... 76615
892 ..... 76615
1605 ..... 74607

### 7 CFR

6 ..... 76253
63 ..... 75867
205 ..... 77521
802 ..... 76254
1463 ..... 76921

**Proposed Rules:**
35 ..... 77561
319 ..... 75157
916 ..... 77563
917 ..... 77563
930 ..... 77564

### 10 CFR

50 ..... 76923
1010 ..... 75373

**Proposed Rules:**
430 ..... 75290
71 ..... 75641
73 ..... 75641

### 12 CFR

4 ..... 75574
21 ..... 75576
510 ..... 75583
563 ..... 75586
950 ..... 76617
980 ..... 76617
1264 ..... 76617
1266 ..... 76617
1269 ..... 76617
1272 ..... 76617
1807 ..... 75376

**Proposed Rules:**
701 ..... 75648
704 ..... 75648
741 ..... 75648

### 14 CFR

29 ..... 77524
39 ..... 74608, 74610, 74616, 75868, 75870, 75872, 75878, 75882, 76624
71 ..... 76924
97 ..... 76626, 76628
431 ..... 75619, 75621

**Proposed Rules:**
25 ..... 76647, 77569
39 ..... 74663, 74665, 74668, 74670, 75159, 75932, 75934, 76317, 76926, 77570
65 ..... 75649
71 ..... 76648, 76650, 76652, 77572, 77573, 77574
139 ..... 76928

### 15 CFR

806 ..... 76630
902 ..... 77528

**Proposed Rules:**
732 ..... 76653
738 ..... 76653
740 ..... 76653
743 ..... 76653
758 ..... 76653
774 ..... 76653, 76664
922 ..... 76319

### 16 CFR

322 ..... 75092
1102 ..... 76832

### 17 CFR

**Proposed Rules:**
1 ..... 77576
23 ..... 75432, 76666
30 ..... 77588
39 ..... 77576
43 ..... 76140, 76930
45 ..... 76574
165 ..... 75728
190 ..... 75162, 75432
240 ..... 75208, 77306
242 ..... 75208
249 ..... 77306
275 ..... 75650, 77052
279 ..... 77052

### 18 CFR

**Proposed Rules:**
35 ..... 75336

**20 CFR**

404.....76256
418.....75884

**21 CFR**

520.....76259
522.....76260
**Proposed Rules:**
101.....76526
1141.....75936

**22 CFR**

**Proposed Rules:**
121.....76930, 76935

**24 CFR**

5.....76260
84.....76260
85.....76260
3500.....74620

**26 CFR**

1 .....75896, 75897, 76262
31.....75896, 75897
40.....75897
301.....75896, 75897
602.....75896
**Proposed Rules:**
1 .....75439, 76321, 76940
300.....76940
301.....75439, 76940

**28 CFR**

541.....76263

**29 CFR**

403.....74936, 75904
4044.....74622

**30 CFR**

250.....76632

**31 CFR**

103.....75593, 75607
594.....75904
595.....75904
597.....75904
**Proposed Rules:**
103.....76677

**33 CFR**

110.....76275
117.....76279, 76632
165.....75145, 76280
167.....77529
**Proposed Rules:**
117 .....76322, 76324, 76688
165.....76328, 76943

**37 CFR**

381.....74623
386.....75624

**39 CFR**

20.....75151
111.....76282
**Proposed Rules:**
3055.....75655

**40 CFR**

52 .....74624, 75625, 75628, 77698
72.....75060
78.....75060
80.....76790
98.....74774, 75060
124.....77230
131.....75762
144.....77230
145.....77230
146.....77230
147.....77230
180 .....74628, 74634, 75389, 76284
271.....76633
1500.....75628
1501.....75628
1502.....75628
1503.....75628
1504.....75628
1505.....75628
1506.....75628
1507.....75628
1508.....75628
**Proposed Rules:**
49.....76331
52 .....74673, 75656, 75658, 76332, 77595
58.....76336
85.....76337
86.....76337
63.....75937
168.....74673
271.....76691
600.....76337

**42 CFR**

424.....76293

**44 CFR**

**Proposed Rules:**
67 .....75941, 75945, 75949, 77598

**45 CFR**

158.....74864

**46 CFR**

**Proposed Rules:**
2.....74674

**47 CFR**

0.....75814
15.....75814
54.....75393
73.....76293, 76294
**Proposed Rules:**
25.....77602

**48 CFR**

Ch. 1.....77722, 77745
1.....77723
2 .....77723, 77727, 77733, 77737
3.....77745
4.....77733
5.....77745
7.....77745
8.....77733
9.....77733, 77739
10.....77745
15.....77741
17.....77733
18.....77733
19.....77727, 77737
22.....77723
31.....77741
33.....77727
35.....77733
41.....77733
52 .....77723, 77727, 77737, 77739, 77741
222.....76295
225.....76297
252.....76295, 76297
**Proposed Rules:**
201.....75444
215.....75550, 76692
234.....75550, 76692
242.....75550, 76692
244.....75550, 76692
245 .....75444, 75550, 76692
252 .....75444, 75550, 76692

**49 CFR**

225.....75911
572.....76636
**Proposed Rules:**
Ch. 2.....76345
209.....75448
213.....75448
214.....75448
215.....75448
217.....75448
218.....75448
219.....75448
220.....75448
221.....75448
222.....75448
223.....75448
224.....75448
225.....75448
227.....75448
228.....75448
229.....75448
230.....75448
231.....75448
232.....75448
233.....75448
234.....75448
235.....75448
236.....75448
238.....75448
239.....75448
240.....75448
241.....75448
501.....76692
509.....76692
510.....76692
511.....76692
512.....76692
520.....76692
523.....76692
525.....76692
526.....76692
531.....76337
533.....76337
571.....76186, 76692
585.....76186
1030.....76946
1031.....76946
1032.....76946
1033.....76946
1034.....76946
1035.....76946
1036.....76946
1037.....76946
1038.....76946
1039.....76946

**50 CFR**

17.....75913, 76086
21.....75153
300.....74640
622.....74648, 74650Q, 74656, 76300, 76874, 76890
635.....75416, 76302
648 .....74661, 76315, 76925
660 .....75417, 75638, 75639
679.....77535
**Proposed Rules:**
223 .....77476, 77496, 77602
648.....76351
660.....75449
679.....76352, 76372

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

**H.R. 4783/P.L. 111–291**

Claims Resolution Act of 2010 (Dec. 8, 2010; 124 Stat. 3064)

**H.R. 1722/P.L. 111–292**

Telework Enhancement Act of 2010 (Dec. 9, 2010; 124 Stat. 3165)

**H.R. 5283/P.L. 111–293**

Help Haitian Adoptees Immediately to Integrate Act of 2010 (Dec. 9, 2010; 124 Stat. 3175)

**H.R. 5566/P.L. 111–294**

Animal Crush Video Prohibition Act of 2010 (Dec. 9, 2010; 124 Stat. 3177)

**S. 3689/P.L. 111–295**

Copyright Cleanup, Clarification, and Corrections Act of 2010 (Dec. 9, 2010; 124 Stat. 3180)

**Last List December 7, 2010**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

# Public Laws

**111th Congress**

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 111th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

*Charge your order. It's Easy!* MasterCard VISA

**To fax your orders (202) 512–2250**
**Phone your orders (202) 512–1800**

_____ subscriptions to **PUBLIC LAWS** for the 111th Congress for $307 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

**May we make your name/address available to other mailers?** YES ☐ NO ☐

**Please Choose Method of Payment:**

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

*Thank you for your order!*

Authorizing signature 2/09

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper