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9 a.m.–12:30 p.m.

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800 North Capitol Street, NW.
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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1777

RIN 0572–AC26

Water and Waste Disposal Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations related to the Section 306C Water and Waste Disposal (WWD) Loans and Grants Program, which provides water and waste disposal facilities and services to low-income rural communities whose residents face significant health risks. Specifically, RUS is modifying the priority points system in order to give additional priority points to the colonias that lack access to water or waste disposal systems and face significant health problems. The intent is to ensure that the neediest areas receive funding.

DATES: This rule is effective August 23, 2012.

FOR FURTHER INFORMATION CONTACT: Jacqueline M. Ponti-Lazaruk, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service. Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 1548, Room 5147 S, Washington, DC 20250–1590. Telephone number: (202) 720–2670, Facsimile: (202) 720–0718.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0109 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Catalog of Federal Domestic Assistance

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under number 10.770 Water and Waste Disposal Loans and Grants (Section 306C). The Catalog is available on the Internet at *http://www.cfda.gov.*

Executive Order 12372

This program is subject to the provisions of Executive Order 12372, Intergovernmental Consultation, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

National Environmental Policy Act Certification

The Agency has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Additionally, during the Proposed Rule comment period no comments were filed by elected leaders or staff of Federally Recognized Indian Tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural

Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

Background

USDA Rural Development (RD) is a mission area within the U.S. Department of Agriculture comprised of the Rural Housing Service, Rural Business/Cooperative Service and Rural Utilities Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than forty programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

The RUS loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation, and cultural and historic preservation.

The Consolidated Farm and Rural Development Act (CONACT) authorizes USDA to provide loans and grants for the development, storage, treatment, purification, or distribution of water; and for the collection, treatment, or disposal of waste in rural areas. Section 306C of the CONACT directs USDA to provide loans and grants to Indian Tribes and other targeted areas, such as colonias, for the construction of new water and waste systems, or for the extension or improvement of such systems, in rural areas. It should be noted that the changes to 7 CFR 1777 are meant to only affect those projects in colonias and do not change the agency's rules for administering assistance that is legislatively mandated to benefit Federally Recognized Indian Tribes. The loans and grants are to be available to provide these facilities only to communities whose residents face significant health risks, as determined by the Secretary, due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The Agency provides such loans and grants through its regulation, 7 CFR 1777, providing assistance to colonias along the U.S. Mexican border.

This rule will change the Rural Utilities Service's current prioritization of potential projects pursuant to 7 CFR part 1777, which is based upon a point system, wherein the greatest possible number of points (50) is given to proposed projects that seek to provide water and/or waste disposal services to a colonia. Colonias are communities along the U.S.-Mexico border that are defined in 7 CFR 1777.4 as "Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989."

RUS remains committed to improving the quality of, and access to, water and waste services in colonias areas, and often collaborates and coordinates with other federal and state funders to do so. Since 1993, RUS has provided $425.5 million in grants for 519 projects serving colonias areas. RUS has also provided funding to Rural Development's Rural Housing Service customers, resulting in $22,137,827 worth of assistance to 6,693 colonia households, which provided access to community water and waste systems. In addition, USDA continues to work with state and local partners to seek new ways to improve program delivery in these areas.

In December 2009, the Government Accountability Office (GAO) released a report describing a number of perceived inadequacies in Federal Government programs across various agencies focused on assisting colonias areas. In the report, GAO recommended that the Secretary of Agriculture direct Rural Development to revise its process to ensure that the agency only provide Section 306C colonia funds to projects that benefit colonias, as defined by Federal statute. While USDA disagrees with GAO's assertion that 306C funds are currently allocated contrary to statutory intent, the Agency understands that more should be done to ensure that colonias areas most in need, especially those that remain unserved, are better targeted for funding.

In an effort to better serve colonias areas, and to address concerns raised by GAO, RUS amends 7 CFR 1777 as it pertains to projects serving colonias.

Purpose of This Final Rule

This final rule clarifies 7 CFR 1777.12 by including specific information on documentation to support a determination of a significant health risk. The rule also revises 7 CFR 1777.13 to specifically focus on the priority point system used in selecting projects for 306C funding. This will ensure that the colonias that lack access to water or waste disposal systems, and face significant health problems, are given priority consideration for 306C funding.

Comments

RUS published a proposed rulemaking in the **Federal Register** on March 9, 2012 at 77 FR 14307 and invited interested parties to comment. One public submission was received with regard to the need for funding and education in colonias area. No other comments were received from any other source. A summary of the submission and the Agency's response is summarized as follows:

Issue 1: Commenter agreed that the efforts of the Department of Agriculture to provide further funding in the form of grants for potable water and proper waste management is a good course of action.

Response: Agency concurs.

Issue 2: Commenter suggested that education and training must be a key component in granting aid.

Response: Agency concurs. RUS has technical assistance providers that work with colonias areas in terms of education and training.

Issue 3: Commenter would like USDA RD to focus on employment projects, as this will begin to lessen dependency on federal aid.

Response: Agency concurs. RUS believes that modern, reliable water and waste infrastructure can provide the foundation for economic growth and future employment opportunities in colonias areas.

List of Subjects in 7 CFR Part 1777

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

For the reasons discussed in the preamble, the Agency amends 7 CFR part 1777 as follows:

PART 1777—SECTION 306C WWD LOANS AND GRANTS

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

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 2. Amend § 1777.12 add a sentence to the end of paragraph (b) introductory

text and add paragraphs (b)(1) through (4) to read as follows:

§ 1777.12 Eligibility.

* * * * *

(b) * * * The following requirements regarding the documentation must be followed:

(1) The originating documentation must come from an independent third party source that has the experience in specifying the health or sanitary problem that currently exists.

(2) The documentation must state specifically the health or sanitary problems that exist. General statements of problems or support for the project are not acceptable.

(3) Current users of the facility must be experiencing the current health or sanitary problem and not future or possible users.

(4) If no facility exists, documentation must include specific health and sanitary problems associated with individual facilities that currently exist to warrant the health and sanitary determination.

■ 3. Revise § 1777.13 to read as follows:

§ 1777.13 Project priority.

Paragraphs (a) through (d) of this section indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met.

(a) *Applications.* The application and supporting information submitted with it will be used to determine applicant eligibility and the proposed project's priority for available funds. Applicants determined ineligible will be advised of their appeal rights in accordance with 7 CFR part 11.

(b) *State Office review.* All applications will be processed and scored in the area office and then reviewed for funding priority at the State Office using RUS Bulletin 1777–2. Eligible applicants that cannot be funded will be advised that funds are not available and advised of their appeal rights as set forth in 7 CFR part 11.

(c) *National Office.* The National Office will allocate funds on a project-by-project basis as requests are received from the State Office. If the amount of funds requested exceeds the amount of funds available, the total project score will be used to select projects for funding. The RUS Administrator may assign up to 35 additional points which will be considered in the total points for items such as geographic distribution of funds, severity of health risks, etc. Unobligated funds will be pooled by mid-August of each year and made available to all States with eligible colonias applicants on a case-by-case basis.

(d) *Selection priorities.* The priorities described below will be used to rate applications and in selecting projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(6) of this section and will be used in selecting projects for funding.

(1) *Population.* The proposed project will serve an area with a rural population:

(i) Not in excess of 1,500—30 points.

(ii) More than 1,500 and not in excess of 3,000—20 points.

(iii) More than 3,000 and not in excess of 5,500—10 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the statewide nonmetropolitan median household income—40 points.

(ii) More than 50 percent and not in excess of 60 percent of the statewide nonmetropolitan median household income—20 points.

(iii) More than 60 percent and not in excess of 70 percent of the statewide nonmetropolitan median household income—10 points.

(3) *Joint financing.* The amount of joint financing committed to the proposed project is:

(i) Twenty percent or more private, local, or State funds except Federal funds channeled through a State agency—10 points.

(ii) Five to 19 percent private, local, or State funds except Federal funds channeled through a State agency—5 points.

(4) *Colonia.* (See definition in § 1777.4). The proposed project will provide water and/or waste disposal services to the residents of a colonia:—50 points. Additional points will be assigned as follows:

(5) *Access and health risks for colonias.* (i) A colonia that lacks access to both water and waste disposal facilities, resulting in a significant health risk—50 points.

(ii) A colonia that lacks access to either water or waste disposal facilities, resulting in a significant health risk—40 points.

(iii) A colonia that has access to water and waste disposal facilities, but is facing a significant health risk—15 points.

(6) *Discretionary.* In certain cases, and when a written justification is prepared, the State Program Official with loan/grant approval authority may assign up to 15 points for items such as natural disaster, to improve compatibility/coordination between RUS' and other agencies' selection systems, to assist those projects that are the most cost effective, high unemployment rate, severity of health risks, etc.

Dated: July 18, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–18017 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 362

RIN 3064–AD88

Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule amends FDIC regulations to prohibit any insured savings association from acquiring or retaining a corporate debt security unless it determines, prior to acquiring such security and periodically thereafter, that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the investment. An issuer would satisfy this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest.

This final rule adopts the proposed creditworthiness standard with the clarifying revision described below. In the final rule, the phrase "projected life of the investment" has been revised to "projected life of the security" to more closely track the language in the Office of the Comptroller of the Currency's ("OCC") final rule.[1] The clarifying-revision addresses ambiguities in the proposed rule and harmonizes the final rule with the final rule adopted by the OCC regarding permissible investments for national banks.[2]

DATES: *Effective Date:* The final rule is effective on July 21, 2012.

FOR FURTHER INFORMATION CONTACT: Kyle Hadley, Chief, Examination Support Section, (202) 898–6532, Division of Risk Management Supervision; Eric Reither, Capital Markets Specialist, (202) 898–3707, Division of Risk

[1] 77 FR 35253. (June 13, 2012).

[2] *Id.* at 35257.

Management Supervision; Suzanne Dawley, Senior Attorney, Bank Activities Section, (202) 898–6509; or Rachel Jones, Attorney, Bank Activities Section, (202) 898–6858.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 28(d) ("Section 28(d)") of the Federal Deposit Insurance Act ("FDI Act"), federal and state savings associations generally are prohibited from acquiring or retaining, either directly or through a subsidiary, a corporate debt security that is rated below investment grade. Section 939(a) ("Section 939(a)") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amends Section 28(d) by replacing the investment-grade standard with a requirement that any corporate debt security investment held by a savings association must satisfy standards of creditworthiness established by the FDIC. This amendment is effective for all savings associations on July 21, 2012.

On December 15, 2011, the FDIC issued a notice of proposed rulemaking ("NPR" or "Proposed Rule"), seeking comment on a proposal to amend the FDIC's regulations in accordance with the requirements of Section 28(d). Specifically, the proposed rule would amend 12 CFR Part 362 to prohibit any insured savings association from acquiring or retaining a corporate debt security unless it determines, prior to acquiring such security and periodically thereafter, that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the investment. An issuer would satisfy this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest.

This final rule adopts the proposed creditworthiness standard with the clarifying revision described below. In the final rule, the phrase "projected life of the investment" has been revised to "projected life of the security" to more closely track the language in the Office of the Comptroller of the Currency's ("OCC") final rule.[3] The clarifying revision addresses ambiguities in the proposed rule and harmonizes the final rule with the final rule adopted by the OCC regarding permissible investments for national banks.[4]

Section 553(d)(3) of the Administrative Procedure Act ("APA") provides that, for good cause found and published with the rule, an agency does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date. The final rule will be effective on July 21, 2012. Consequently, the final rule's publication will be less than 30 days before its effective date. The FDIC invokes this good cause exception to the 30 day publication requirement because the statutory amendment[5] that this rule implements is effective on July 21, 2012. On that date savings associations will be prohibited from acquiring or retaining a corporate debt security that does not meet the creditworthiness standard established by the FDIC. As a result, until the FDIC establishes that standard, savings associations would not be able to comply with the statute. However, in order to allow saving associations sufficient time to fully develop their processes for making creditworthiness determinations, the FDIC is allowing institutions until January 1, 2013 to comply with this final rule.

Under Section 28(d)(1) of the FDI Act, federal and state savings associations generally are prohibited from acquiring or retaining, either directly or through a subsidiary, a corporate debt security that is not "of investment grade."[6] Section 28(d)(4) defines investment grade as follows: "Any corporate debt security is not of 'investment grade' unless that security, when acquired by the savings association or subsidiary, was rated in one of the four highest ratings categories by at least one nationally recognized statistical rating organization" (each, an "NRSRO").[7]

Consistent with the requirements of Section 28(d), section 362.11(b)(1) of the FDIC's regulations generally prohibits a state savings association from acquiring or retaining a corporate debt security that is not of investment grade.[8] Under 12 CFR 362.10(b), the term "corporate debt securities that are not of investment grade" is defined, in a manner consistent with Section 28(d), as, "any corporate security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization."[9]

The FDIC currently may require a state savings association to take corrective measures in the event a corporate debt security experiences a downgrade (to non-investment grade status) following acquisition. For example, a savings association may be required to reduce the level of non-investment grade corporate debt security investments as a percentage of tier 1 or total capital, write-down the value of the security to reflect an impairment, or divest the security. The FDIC addresses nonconforming investments on a case-by-case basis through the examination process, and in view of the risk profile of the savings association and size and composition of its investment portfolio.

Section 939(a)(2) of the Dodd-Frank Act amends Section 28(d) by (a) removing references to NRSRO credit ratings, including the investment-grade standard under paragraph (1) and the definition of "investment grade" under paragraph (4); and (b) inserting in paragraph (1) a reference to "standards of creditworthiness established by the [FDIC]". Section 939(a) is effective on July 21, 2012, and, therefore, as of this date federal and state savings associations will be permitted to invest only in corporate debt securities that satisfy creditworthiness standards established by the FDIC.[10]

On December 15, 2011, the FDIC issued the Proposed Rule to seek comment on a proposal to amend the FDIC's regulations in accordance with the requirements of Section 28(d). Specifically, the NPR proposed to amend 12 CFR part 362 to prohibit any insured savings association from acquiring or retaining a corporate debt security unless it determines, prior to acquiring such security and periodically thereafter, that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the investment. For purposes of the NPR, an issuer would satisfy this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest. In addition, on December 15, 2011, the FDIC proposed guidance to assist

[3] 77 F.R. 35253. (June 13, 2012).

[4] *Id.* at 35257.

[5] Section 939(a) of the Dodd Frank Wall Street Reform and Consumer Protection Act.

[6] Section 28(d)(1) of the FDI Act. 12 U.S.C. 1831e(d)(1). Under Section 28(d)(2), the investment-grade requirement does not apply to a corporate debt security acquired or retained by a "qualified affiliate" of a savings association, defined as, (i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and (ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the capital of the savings association.

[7] 12 U.S.C. 1831e(d)(4).

[8] 12 CFR 362.11(b).

[9] *Id.* at 362.10(b). Under section 28(d)(4)(C) of the FDI Act, however, this term does not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as a percentage of assets under section 5(c)(1)(D), (E), or (F) of the Home Owners Loan Act ("HOLA").

[10] *See* section 939(g) of the Dodd-Frank Act.

savings associations in meeting due diligence requirements in assessing credit risk for portfolio investments.

The FDIC received five comments on the proposed rule and guidance document from bank trade groups, a bank, and an individual. The commenters generally supported the NPR and stated that it presented a workable alternative to the use of credit ratings. The commenters also raised specific issues, which are addressed in more detail below.

After considering the comments, the FDIC has decided to finalize the proposed creditworthiness standard, with the clarifying revision described below. Additionally, to assist savings associations in making these creditworthiness determinations, the FDIC is publishing a final guidance document today in this issue of the **Federal Register**. The final guidance document reflects the clarifying revisions in the final rule, but otherwise remains unchanged from the proposal.

The final rule revises the proposed creditworthiness standard to address ambiguities in the proposed rule and harmonize the final rule with a final rule adopted by the OCC regarding permissible investments for national banks.[11] In the final rule, the phrase "projected life of the investment" has been revised to "projected life of the security" to more closely track the language in the OCC's final rule. This revision also clarifies that, for purposes of the final rule, federal and state savings associations are required to evaluate the credit risk of a security through its maturity or projected maturity date.

II. Description of the Final Rule

In accordance with the requirements of Section 939(a), the final rule amends sections 362.9 and 362.11(b)(1) of the FDIC's regulations. In section 362.11(b)(1), the final rule replaces the investment-grade standard, applicable to permissible corporate debt securities investments of a state savings association, with a requirement, applicable to federal *and* state savings associations, that prior to acquiring a corporate debt security and periodically thereafter, the savings association must determine that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the security. An issuer satisfies this requirement if the savings association appropriately determines that the obligor presents low default risk and is likely to make timely payments of principal and interest. The FDIC notes that, in addition to the requirements of the final rule, any savings association investment in a corporate debt security must be consistent with safety and soundness principles.

In determining whether an issuer has an adequate financial capacity to satisfy all financial commitments under a security for the projected life of the security, the FDIC expects savings associations to consider a number of factors commensurate with the risk profile and nature of the issuer. Although savings associations are permitted to consider an external credit assessment for purposes of such determination, they must supplement any external credit assessment with due diligence processes and analyses that are appropriate for the size and complexity of the security. A security rated in the top four rating categories by an NRSRO is not automatically deemed to satisfy the creditworthiness standard. The more complex a security's structure, the greater the expectations, even when the credit quality is perceived to be very high.

Comments from industry associations expressed concern regarding the scope and depth of the proposed due diligence requirements, particularly for smaller institutions. The FDIC believes that the proposed standard of creditworthiness and associated due diligence requirements are consistent with those under the ratings-based standard and existing due diligence requirements and guidance. Under the existing ratings-based standard set forth in part 362, savings associations are expected to avoid sole reliance on a credit rating to evaluate the credit risk of a security, and consistently have been advised through guidance and other supervisory materials to supplement any use of credit ratings with additional research on the credit risk of a particular security. Accordingly, the FDIC does not expect the final rule to materially change the investment risk-management practices of most savings associations or the scope of permissible corporate debt securities investments under part 362.

Also, in today's **Federal Register**, the FDIC is publishing a final guidance document to assist savings associations in determining whether a corporate debt security is permissible for investment under part 362, and to further explain the FDIC's expectations with regard to regulatory due diligence requirements. The final guidance document reflects the clarifying revisions in the final rule, but otherwise remains unchanged from the proposed guidance document. The final guidance document describes the factors savings associations should consider in evaluating the creditworthiness of an issuer; particularly the issuer's capacity to satisfy all financial commitments under the security for the projected life of the security. While the guidance explains the FDIC's expectations in more detail, the FDIC's regulations require savings associations to understand and evaluate the risks of purchasing investment securities. Savings associations should not purchase securities for which they do not understand the relevant risks.

The FDIC is not revising its current supervisory practice with respect to nonconforming corporate debt securities investments. That is, if a security acquired in compliance with the final rule experiences credit impairment or other deterioration following its acquisition, the FDIC may require a savings association to take corrective measures on a case-by-case basis.

In addition to the revisions described above, the final rule makes conforming, technical amendments to section 362.9 of the FDIC's regulations to expand the scope of the rule to federal savings associations[12] and reflect the abolishment of the Office of Thrift Supervision under section 313 of the Dodd-Frank Act.

Effective Date

In the NPR, the FDIC proposed an effective date of July 21, 2012, in accordance with the requirements of section 939(a) of the Dodd-Frank Act. However, industry commenters expressed concern that savings associations would not have sufficient time to develop processes for making creditworthiness determinations on new securities purchased before the effective date of this final rule. These commenters suggested that the FDIC adopt a one-year transition period before the FDIC requires compliance with the rule. One commenter also requested an additional year beyond the transition period to allow for review of existing securities held by the institution. The FDIC recognizes that it may take time for some savings associations to develop the systems and processes necessary to make creditworthiness determinations under the new standard. Therefore, the FDIC is providing a transition period until January 1, 2013, to allow savings associations to come into compliance with this final rule. However, as proposed, the final rule is effective as of July 21, 2012.

The final rule does not grandfather any corporate debt securities acquired

[11] 77 FR 35253, 35257.

[12] Currently, section 362.11(b) applies only to insured state savings associations.

before the effective date and, therefore, savings associations are permitted to retain only those securities for which the savings association determines that (as of the effective date and periodically thereafter) the issuer has adequate capacity to satisfy all financial commitments under the security for the projected life of the security. This treatment for previously acquired securities is consistent with the requirements of Section 28(d) and the final rule, which prohibit a savings association from acquiring or *retaining* any corporate debt security that does not satisfy the creditworthiness standard described in this final rule. Accordingly, the final rule seeks to emphasize that savings associations must periodically re-evaluate the likelihood of repayment for securities retained in their investment portfolios in view of any changes in economic conditions that may affect a security's credit risk. Savings associations will still have until the end of the transition period, January 1, 2013, to evaluate their existing holdings and ensure that they meet the revised standard.

III. Implementation Guidance

Together with this final rule, the FDIC is publishing guidance for savings associations' investment activities. This final guidance document reflects the FDIC's expectations for savings associations as they review their systems and consider any changes necessary to comply with the provisions for assessing credit risk in this final rule. The guidance describes factors institutions should consider with respect to certain types of investment securities to assess creditworthiness and to continue conducting their activities in a safe and sound manner.

As noted above, FDIC regulations require that savings associations conduct their investment activities in a manner that is consistent with safe and sound practices. Neither the final rules, nor the final guidance document, change this requirement. The FDIC expects savings associations to continue to follow safe and sound practices in their investment activities.

IV. Regulatory Analyses

A. Administrative Procedure Act (APA)

Section 553(d)(3) of the APA (5 U.S.C. 500 *et seq.*) provides that, for good cause found and published with the rule, an agency does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date. The final rule will be effective on July 21, 2012. Consequently, the final rule's publication will be less than 30 days before its effective date. The FDIC invokes this good cause exception to the 30 day publication requirement because the statutory amendment [13] that this rule implements is effective on July 21, 2012. On that date savings associations will be prohibited from acquiring or retaining a corporate debt security that does not meet the creditworthiness standard established by the FDIC. As a result, until the FDIC establishes that standard, savings associations would not be able to comply with the statute. However, in order to allow saving associations sufficient time to fully develop their processes for making creditworthiness determinations, the FDIC is allowing institutions until January 1, 2013 to comply with this final rule.

B. Paperwork Reduction Act (PRA)

No new collection of information pursuant to the PRA (44 U.S.C. 3501 *et seq.*) is contained in this final rule.

C. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA),[14] the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) [15] and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. For the reasons provided below, the FDIC certifies that the Final Rule does not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in this Final Rule, Section 28(d) of the FDI Act, as amended by Section 939(a) of the Dodd-Frank Act, prohibits federal and state savings associations from acquiring or retaining a corporate debt security that does not meet FDIC's standards of creditworthiness. In accordance with the requirements of amended Section 28(d), this final rule prohibits savings associations from investing in a corporate debt security unless the savings association determines that the issuer has adequate capacity to meet all financial commitments under the security for the projected life of the security. Consequently, this final rule only impacts savings associations that hold corporate debt security investments.

In determining whether this final rule has a significant economic impact on a substantial number of small savings associations, the FDIC reviewed the March 2012 Reports of Condition and Income (Call Report) data to evaluate the number of savings associations with corporate debt securities. There are 1044 insured state and federal savings associations. Of these 1044 insured savings associations, 356 reported investments in other domestic debt securities on the Call Report, where thrifts report their investment in corporate bonds.[16] Even assuming the entire amount of other domestic debt securities listed on the Call Report represents investment in corporate debt securities, other domestic debt securities represents only 0.97 percent of the aggregate total assets of the 1044 savings associations.

Moreover, only savings associations with total assets of $175 million or less apply for purposes of the RFA analysis. When applying this additional size criterion, only 80 institutions list other domestic debt securities in their Call Report. For these smaller savings institutions, the total amount listed as investment in other domestic debt securities represents only 0.45 percent of the total assets. And only eight of these smaller thrifts have concentrations in other domestic debt securities that exceed 50 percent of their tier 1 capital. Due to the small investment in corporate debt securities on small savings associations' balance sheets and due to the existing need to do due diligence relating to any investment in order to assure that a savings association is operating in a safe and sound manner, the additional compliance burden does not result in a significant economic impact on a substantial number of small savings associations.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Office of Management and Budget has determined that the Final Rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801, *et seq.*). As required by SBREFA, the FDIC will file the appropriate

[13] Section 939(a) of the Dodd Frank Wall Street Reform and Consumer Protection Act.

[14] 5 U.S.C. 605(b).

[15] 5 U.S.C. 601 *et seq.*

[16] This line item is where the dollar exposure to corporate debt securities, along with other forms of investment, should be slotted according to the Call Report instructions. This line may also include investments in instruments other than corporate debt securities, this limited granularity does not permit a precise understanding of the exposure to corporate debt securities.

reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

D. Plain Language

Each Federal banking agency, such as the FDIC, is required to use plain language in all proposed and final rules published after January 1, 2000. (12 U.S.C. 4809) In addition, in 1998, the President issued a memorandum directing each agency in the Executive branch, to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The FDIC sought to present the Proposed Rule in a simple and straightforward manner. The FDIC received no comments on the use of plain language, and the Final Rule is identical to the Proposed Rule except for a clarifying revision.

List of Subjects in 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 362 of chapter III of title 12, Code of Federal Regulations as follows:

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

■ 1. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

■ 2. Amend § 362.9 by revising paragraph (a) to read as follows:

§ 362.9 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart H of part 303 of this chapter, implements the provisions of section 28(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831e(a)) that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and their service corporations. This subpart also implements the provision of section 28(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831e(d)) that restricts state and federal savings associations from investing in certain corporate debt securities. The phrase "activity permissible for a Federal savings association" means any activity authorized for a Federal savings association under any statute including the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464 et seq.), as well as activities recognized as permissible for a Federal savings association in regulations issued by the Office of the Comptroller of the Currency (OCC) or in bulletins, orders or written interpretations issued by the OCC, or by the former Office of Thrift Supervision until modified, terminated, set aside, or superseded by the OCC.

* * * * *

■ 3. Amend § 362.11 by revising the section heading, removing the last sentence of paragraph (b)(1), and adding two sentences in its place to read as follows:

§ 362.11 Activities of insured savings associations.

* * * * *

(b) * * *

(1) * * * On and after July 21, 2012, an insured savings association directly or through a subsidiary (other than, in the case of a mutual savings association, a subsidiary that is a qualified affiliate), shall not acquire or retain a corporate debt security unless the savings association, prior to acquiring the security and periodically thereafter, determines that the issuer of the security has adequate capacity to meet all financial commitments under the security for the projected life of the security. Saving associations have until January 1, 2013 to come into compliance with this treatment of corporate debt securities.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of July, 2012.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–17860 Filed 7–20–12; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 362

Guidance on Due Diligence Requirements for Savings Associations in Determining Whether a Corporate Debt Security Is Eligible for Investment

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final guidance.

SUMMARY: On December 15, 2011, the FDIC proposed guidance to assist savings associations in conducting due diligence to determine whether a corporate debt security is eligible for investment under the Proposed Rule. Today, the FDIC is finalizing the guidance. The final guidance document includes clarifying language adopted in the final rule, but otherwise, is being finalized as proposed.

DATES: *Effective Date:* This guidance is effective July 21, 2012.

FOR FURTHER INFORMATION CONTACT: Kyle Hadley, Chief, Examination Support Section, (202) 898–6532, Division of Risk Management Supervision; Eric Reither, Capital Markets Specialist, (202) 898–3707, Division of Risk Management Supervision; Suzanne Dawley, Senior Attorney, Bank Activities Section, (202) 898–6509; or Rachel Jones, Attorney, Bank Activities Section, (202) 898–6858.

SUPPLEMENTARY INFORMATION:

Background

Effective on July 21, 2012, section 939(a) ("section 939(a)") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amends section 28(d) ("section 28(d)") of the Federal Deposit Insurance Act ("FDI Act") to prohibit a savings association from acquiring or retaining a corporate debt security that does not satisfy creditworthiness standards established by the Federal Deposit Insurance Corporation ("FDIC"). On December 15, 2011, the FDIC published for public comment a proposed rule ("Proposed Rule" or "NPR") to implement the requirements of section 939(a). Under the Proposed Rule, an insured savings association would be prohibited from acquiring or retaining a corporate debt security unless it determines, prior to acquiring the security and periodically thereafter, that the issuer has adequate capacity to satisfy all financial commitments under the security for the projected life of the investment. The final rule clarifies the proposed creditworthiness standard; in the final rule, the phrase "the projected life of the investment" has been revised to "the projected life of the security" to more closely track the language in the Office of the Comptroller of the Currency's (OCC) final rule. Today, the final rule is being published in the **Federal Register**.

Under Section 28(d) of the FDI Act, federal and state savings associations generally are prohibited from acquiring or retaining, either directly or indirectly through a subsidiary, a corporate debt security that is rated below investment

grade. Section 939(a) amends Section 28(d) by replacing the investment-grade standard with a requirement that any corporate debt security investment by a savings association satisfy standards of creditworthiness established by the FDIC. This amendment is effective for all savings associations on July 21, 2012.

On December 15, 2011, the FDIC issued the proposed guidance document together with the Proposed Rule, to seek comment on the FDIC's proposed implementation of Section 939(a). Specifically, the NPR proposed to amend section 362.11(b) of the FDIC's regulations to prohibit an insured savings association from acquiring or retaining a corporate debt security unless it determines, prior to acquisition and periodically thereafter, that the issuer has adequate capacity to satisfy all financial commitments under the security for the projected life of the investment. For purposes of the NPR, an issuer would satisfy this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest. The proposed guidance document sets forth the criteria a savings association should expect to consider in making such a determination.

The FDIC received five comments on the proposed rule and guidance document from bank trade groups, a bank, and an individual. The commenters generally supported the Proposed Rule and stated that it presented a workable alternative to the use of credit ratings.

Some commenters stated that the "one-size fits-all" due diligence requirements would create an undue burden for smaller savings associations. The FDIC believes that the proposed standard of creditworthiness and the due diligence required to meet it are consistent with those under prior ratings-based standards and existing due diligence requirements and guidance. Even under the prior ratings-based standards, savings associations of all sizes should not rely solely on a credit rating to evaluate the credit risk of a security, and consistently have been advised through guidance and other supervisory materials to supplement any use of credit ratings with additional research on the credit risk of a particular security. Savings associations, regardless of size, should not purchase securities for which they do not understand the relevant risks.

After considering the comments and the issues raised, the FDIC has decided to finalize the guidance with the clarifying revisions adopted in the final rule, but otherwise as proposed. Elsewhere in today's **Federal Register**, the FDIC also has published a final rule to amend the FDIC's regulations in accordance with the requirements of Section 28(d). Both the final rule and final guidance document are effective as of July 21, 2012. The final rule provides for a transition period until January 1, 2013 to provide savings associations time to come into compliance with the final rule and guidance.

Final Guidance

The final guidance document provides supervisory expectations for savings associations conducting due diligence to determine whether a corporate debt securities investment satisfies the creditworthiness requirements of the final rule—that is, whether the issuer has adequate capacity to satisfy all financial commitments under the security for the projected life of the security. The FDIC expects savings associations to conduct appropriate ongoing reviews of their corporate debt investment portfolios to ensure that the composition of the portfolio is consistent with safety and soundness principles and appropriate for the risk profile of the institution as well as the size and complexity of the portfolio.

Text of Final Guidance

The text of the final supervisory guidance regarding the FDIC's expectations for insured savings associations conducting due diligence to assess the credit risk of a corporate debt security, in accordance with the requirements of 12 CFR 362.11(b), follows.

Purpose

The Federal Deposit Insurance Corporation ("FDIC") is issuing this guidance document ("Guidance") to establish supervisory expectations for savings associations conducting due diligence to determine whether a corporate debt security is eligible for investment under 12 CFR part 362. Section 362.11(b) of the FDIC's regulations implements Section 28(d) of the FDI Act (as amended by section 939(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act), and prohibits an insured savings association from acquiring or retaining a corporate debt security unless it determines, prior to acquiring the security and periodically thereafter, that the issuer has adequate capacity to satisfy all financial commitments under the security for the projected life of the security. An issuer satisfies this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest. The investment also must be consistent with safe and sound banking practices.

Background

Part 362 of the FDIC's regulations sets forth the requirements for determining whether securities have appropriate credit quality and marketability characteristics to be purchased and held by insured savings associations. Under section 362.11(b), a savings association may acquire or retain a corporate debt security only if the issuer has adequate capacity to satisfy all financial commitments under the security for the projected life of the security. An issuer satisfies this requirement if, based on the assessment of the savings association, the issuer presents a low risk of default and is likely to make full and timely repayment of principal and interest.

Savings associations must be able to demonstrate that their investment securities meet applicable credit quality standards. This Guidance sets forth criteria that savings associations should consider when conducting due diligence to determine whether a security is eligible for investment under part 362.

The federal banking agencies have maintained long-standing supervisory guidance that banks and savings associations implement a risk management process to ensure that credit risk, including the credit risk of an investment portfolio, is effectively identified, measured, monitored, and controlled. The 1998 *Interagency Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities* (Policy Statement) provides risk management standards for the securities investment activities of banks and savings associations.[1] The Policy Statement emphasizes the importance of an institution conducting a thorough credit risk analysis before and periodically after the acquisition of a security. Such analysis would allow an institution to understand and effectively manage the risks within its investment portfolio, including credit risk, and is an essential element of a sound investment portfolio risk management framework. The Policy

[1] On April 23, 1998, the FDIC, together with the Federal Reserve Board, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision, issued the "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities." As issued by the OTS, the Policy Statement applied to both state and Federal savings associations.

Statement is generally consistent with the agencies' *Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks and Thrifts,* which describes the importance of management's credit risk analysis and its use in examiner decisions concerning investment security risk ratings and classifications.[2]

Determining Whether Securities Are Permissible Prior to Purchase

The FDIC expects savings associations to conduct an appropriate level of due diligence in determining whether a corporate debt security is eligible for investment under 12 CFR 362.11(b). This may include consideration of internal analyses, third-party research and analytics including internal risk ratings, external credit ratings, default statistics, and other sources of information appropriate for the particular security. The depth of the due diligence should be a function of the security's credit quality, the complexity of the issuer's financial structure, and the size of the investment. As an issuer's financial structure becomes more complex, the more credit-related due diligence an institution should perform, even when the credit quality is perceived to be very high. Management should ensure they understand the security's structure and how the security will perform in various scenarios throughout the business cycle. The FDIC expects savings associations to consider a variety of factors relevant to the particular security when determining whether a security is a permissible and sound investment. The range and type of specific factors an institution should consider will vary depending on the particular type and nature of the security. As a general matter, a savings association will have a greater burden to support its determination if one factor is contradicted by a finding under another factor.

Although part 362 does not provide specific investment quality requirements, savings associations should conduct an appropriate level of due diligence prior to purchasing a corporate debt security to ensure that it is eligible for investment under part 362. A savings association should review and update this analysis periodically, as appropriate for the size and risk profile of the security. By way of example, appropriate factors a savings association should consider include, but should not be limited to, the following:

- Confirm spread to U.S. Treasuries is consistent with bonds of similar credit quality;
- Confirm risk of default is low and consistent with bonds of similar credit quality;
- Confirm capacity to pay through internal credit analysis that can be supplemented with other third-party analytics;
- Understand applicable market demographics/economics; and
- Understand current levels and trends in operating margins, operating efficiency, profitability, return on assets and return on equity.

Maintaining an Appropriate and Effective Portfolio Risk Management Framework

Savings associations should have in place an appropriate risk management framework for the level of risk in their corporate debt investment portfolios. Failure to maintain an adequate investment portfolio risk management process, which includes understanding key portfolio risks, is considered an unsafe and unsound practice. Savings associations should conform to safe and sound banking practices and, similarly, should consider appropriate investment portfolio risks in connection with the acquisition of a corporate debt security.[3]

Having a strong and robust risk management framework appropriate for the level of risk of a savings association's investment portfolio is particularly critical for managing portfolio credit risk. A key role for management in the oversight process is to translate the risk tolerance levels established by the board of directors into a set of internal operating policies and procedures that govern the institution's investment activities. Specifically, investment policies should provide credit risk concentration limits. Such limits may apply to concentrations relating to a single or related issuer, a geographical area, and obligations with similar characteristics. Savings associations with investment portfolios that lack diversification in one of the aforementioned areas should enhance their monitoring and reporting systems. Safety and soundness principles warrant effective concentration risk management programs to ensure that credit exposures do not reach an excessive level.

Savings associations should identify and measure the risks of their investments periodically after acquisition. Such analyses allow an institution to understand and effectively manage the risks of its investment portfolio, including credit risk, and are an essential element of a sound investment portfolio risk management framework. Exposure to each type of risk for each security should be measured and aggregated with similar exposures on an institution-wide basis. Risk measurement should be obtained from sources independent of sellers or counterparties and should be periodically validated. Irrespective of any contractual or other arrangements, savings associations are responsible for understanding and managing the risks of all of their investments.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of July, 2012.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–17854 Filed 7–20–12; 11:15 am]

BILLING CODE 6714–01–P

[2] *See,* FDIC Financial Institution Letter, 70–2004 (June 15, 2004).

[3] *See supra* footnote 1.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9596]

RIN 1545–BK39

Disregarded Entities and the Indoor Tanning Services Excise Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to temporary regulations (TD 9596), which were published in the **Federal Register** on June 25, 2012 (77 FR 37806) relating to disregarded entities (including qualified subchapter S subsidiaries) and the indoor tanning services excise tax.

DATES: This correction is effective on July 24, 2012, and applies on and after June 25, 2012.

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9596) that are the subject of this correction are under section 7701 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805 * * *

§ 301.7701–2T [Corrected]

■ **Par. 2.** Section 301.7701–2T is revised to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) Through (c)(2)(iv) [Reserved]. For further guidance, see § 301.7701–2(a) through (c)(2)(iv).

(A) *In general.* Section 301.7701–2(c)(2)(i) (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24 and 25 of the Internal Revenue Code). However, § 301.7701–2(c)(2)(i) does apply to withholding requirements imposed under section 3406 (backup withholding). The owner of a business entity that is disregarded under § 301.7701–2 is subject to the withholding requirements imposed under section 3406 (backup withholding). Section 301.7701–2(c)(2)(i) also applies to taxes imposed under Subtitle A, including Chapter 2—Tax on Self Employment Income. The owner of an entity that is treated in the same manner as a sole proprietorship under § 301.7701–2(a) will be subject to tax on self-employment income.

(B) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(B).

(C) *Exceptions.* For exceptions to the rule in § 301.7701–2(c)(2)(iv)(B), see sections 31.3121(b)(3)-1(d), 31.3127–1(c), and 31.3306(c)(5)-1(d).

(D) through (c)(2)(v) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(D) through (c)(2)(v).

(vi) *Tax liabilities with respect to the indoor tanning services excise tax*—(A) *In general.* Notwithstanding any other provision of § 301.7701–2, § 301.7701–2(c)(2)(i) (relating to certain wholly owned entities) does not apply for purposes of—

(*1*) Federal tax liabilities imposed by Chapter 49 of the Internal Revenue Code;

(*2*) Collection of tax imposed by Chapter 49 of the Internal Revenue Code; and

(*3*) Claims of a credit or refund related to the tax imposed by Chapter 49 of the Internal Revenue Code.

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under § 301.7701–2 is treated as a corporation with respect to items described in paragraph (c)(2)(vi)(A) of this section.

(d) through (e)(4) [Reserved]. For further guidance, see § 301.7701–2(d) through (e)(4).

(5) Paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section apply to wages paid on or after November 1, 2011. For rules that apply to paragraph (c)(2)(iv)(A) of this section before November 1, 2011, see 26 CFR part 301 revised as of April 1, 2009. However, taxpayers may apply paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section to wages paid on or after January 1, 2009.

(e)(6) through (e)(7) [Reserved]. For further guidance, see § 301.7701–2(e)(6) and (e)(7).

(8) *Expiration date.* The applicability of paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section expires on or before October 31, 2014.

(9) *Indoor tanning services excise tax*—(i) *Effective/applicability date.* Paragraph (c)(2)(vi) of this section applies to taxes imposed on amounts paid on or after July 1, 2012.

(ii) *Expiration date.* The applicability of paragraph (c)(2)(vi) of this section expires on or before June 22, 2015.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–17959 Filed 7–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–0629]

RIN 1625–AA08

Special Local Regulation; Battle on the Bay Powerboat Race Atlantic Ocean, Fire Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the navigable waters of the Atlantic Ocean off Smith Point Park, Fire Island, NY during the Battle on the Bay Powerboat Race. This action is necessary to provide for the safety of life of participants and spectators during this event. Entering into, transiting through, remaining, anchoring or mooring within these regulated areas would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: This rule is effective August 25 and 26, 2012 and will be enforced from 7 a.m. through 7 p.m. each day.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0629]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Battle on the Bay Powerboat Race has had three separate rulemakings prior to this rule listed here in chronological order.

On September 3, 2008 the Coast Guard published a final rule entitled, Safety Zone; Patchogue Bay, Patchogue, NY, in the **Federal Register** (73 FR 51367) establishing a safety zone on Patchogue Bay, Patchogue, NY in 33 Code of Federal Regulation (CFR) 165.158 for the Battle on the Bay Powerboat Race. No comments or requests for public meeting were received during the rulemaking.

On July 6, 2011 the Coast Guard published a temporary final rule entitled, Special Local Regulations & Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone in the **Federal Register** (76 FR 39292) establishing a special local regulation on the Great South Bay, Islip, NY in 33 CFR 100.T01–0550 for the Battle on the Bay Powerboat Race.

On February 10, 2012 the Coast Guard published a final rule entitled, "Special Local Regulations; Safety and Security Zones; Recurring Events in Captain of the Port Long Island Sound Zone" in the **Federal Register** (77 FR 6954) establishing a special local regulation on Patchogue Bay, Patchogue, NY in 33 CFR 100.100 for the Battle on the Bay Powerboat race. No comments or request for a public meeting were received during the rulemaking process.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule; any delay encountered in this regulation's effective date caused by publishing an NPRM would be contrary to public interest since immediate action is needed to protect both spectators and participants from the safety hazards created by this event.

We spoke with the event sponsor for Battle on the Bay Powerboat Race. They indicated they are unable to reschedule the event because the powerboats that will be racing in the event are part of a traveling circuit with a schedule established more than a year ahead of time, the earliest opportunity to reschedule the event is 2013. Earlier this year, the sponsor was attempting to secure a new location for the event. After months of meetings with different towns and filing permits the sponsor received approval to hold the event in Suffolk County. When the agreement was finally reached on May 4, 2012 the Coast Guard was provided 110 days notice—an insufficient amount of time to publish an NPRM (and subsequent FR) for a new event location. The sponsor is now aware of the requirements for submitting a new marine event application 135 days in advance and has agreed to comply in the future.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1233 and Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory special local regulations.

This temporary rule establishes a special local regulation in order to provide for the safety of life on navigable waters during the Battle on the Bay Powerboat Race.

C. Discussion of the Final Rule

On Saturday August 25, 2012 and Sunday August 26, 2012 from 7 a.m. until 7 p.m. Great South Bay Racing Inc. will be sponsoring the Battle on the Bay Powerboat Race, an offshore powerboat racing regatta. The event will be held on the Atlantic Ocean off Smith Point Park, Fire Island, NY and will feature six classes of offshore powerboats including vessels from the Extreme Class which can reach speeds exceeding 200 miles per hour. The sponsor expects a minimum of 5,000 spectators for this event with a portion of them expected to view the event from recreational vessels.

The COTP Sector Long Island Sound has determined the combination of increased numbers of recreation vessels, and vessels racing at high speeds has the potential to result in serious injuries or fatalities. This special local regulation temporarily establishes regulated areas to restrict vessel movement around the location of the regatta to reduce the risk associated with congested waterways. For these reasons the Coast Guard is establishing three temporary regulated areas on the Atlantic Ocean, from August 25, 2012 through August 26, 2012:

(1) *Regatta Course Area.* This area is for the exclusive use of registered regatta participants, safety and support vessels.

(2) *No Entry Area.*

(3) *Spectator Viewing Area.* This area is for the exclusive use of spectator vessels. The sponsor will mark this area with white striped blue buoys.

The geographic locations of these regulated areas and specific requirements of this rule are contained in the regulatory text.

Because a number of spectator vessels are expected to congregate around the location of this event, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including powerboats traveling at high speeds. During the enforcement periods, persons and vessels are prohibited from entering, transiting through, remaining, anchoring or mooring within the regulated areas unless stipulated otherwise or specifically authorized by the COTP or the designated representative. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of these regulated areas.

The Coast Guard determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas.

The Coast Guard has ordered special local regulations and safety zones for this event taking place in different locations in the past and has received no public comments or concerns regarding the impact to waterway traffic. Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: The regulated areas are of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Persons or vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice

to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas August 25 and 26, 2012 from 7 a.m. until 7 p.m.

This temporary special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas are of limited size and of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Additionally, before the effective period, public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T01–0629 to read as follows:

§ 100.35T01–0629 Special Local Regulation; Battle on the Bay Powerboat Race Atlantic Ocean, Fire Island, NY.

(a) *Regulated Areas.* All coordinates are North American Datum 1983 (NAD 83).

(1) "Regatta Course Area": All navigable waters of the Atlantic Ocean off Smith Point Park within the following boundaries: Beginning at point "A" at position 40°43′42″ N, 072°51′57″ W, then south to point "B" at position 40°43′17″ N, 072°51′43″ W, then east to point "C" at position 40°43′40″ N, 072°50′23″ W, then east to point "D" at position 40°44′5″ N, 072°49′0″ W, then north to point "E" at position 40°44′31″ N, 072°49′10″ W then following the shoreline west to the point of origin point "A".

(2) "No Entry Area": A buffer zone comprising all navigable waters of the Atlantic Ocean extending 500 feet outwards from the border of the "Regatta Course Area" described above.

(3) "Spectator Viewing Area": All navigable waters of the Atlantic Ocean between 500 feet and 1,000 feet outward from the portion of the southern boundary of the "Regatta Course Area" between the center of the course marked by point "C" and the eastern boundary marked by point "D". The sponsor will mark this area with white striped blue buoys.

(b) *Special Local Regulations.*

(1) In accordance with the general regulations found in § 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound, or designated representative.

(2) All persons and vessels are authorized by the COTP Sector Long Island Sound to enter areas of this special local regulation in accordance with the following restrictions:

(i) "Regatta Course Area": Access is limited to registered regatta participants, safety and support vessels, and official vessels.

(ii) "No Entry Area": Access is limited to safety and support vessels, official vessels, and registered regatta participants when actively transiting into or out of the "Regatta Course Area".

(iii) "Spectator Viewing Area": Access is limited to spectator vessels engaged in watching the event.

(3) All persons and vessels shall comply with the instructions of the COTP Sector Long Island Sound or designated representative. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must contact the COTP Sector Long Island Sound by telephone at (203) 468–4401, or designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Sector Long Island Sound or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Sector Long Island Sound or designated representative.

(5) The Coast Guard will provide notice of the regulated areas prior to the event through appropriate means, which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) *Enforcement Period:* This section will be enforced from 7:00 a.m. until. 7:00 p.m. on both August 25, 2012 and August 26, 2012.

Dated: July 10, 2012.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2012–17606 Filed 7–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0459]

RIN 1625–AA00

Special Local Regulation; San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is amending the special local regulation for the San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration. The amendment will increase the restricted area surrounding U.S. Navy parade vessels operating in regulated area "Alpha" from 200 yards to 500 yards. When the special local regulation is activated and subject to enforcement, this rule would limit the movement of vessels within 500 yards of any Navy parade vessel.

DATES: This rule is effective August 23, 2012. Comments and related material must be received by the Coast Guard on or before August 23, 2012.

Requests for public meetings must be received by the Coast Guard on or before August 13, 2012.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2012–0459. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments identified by docket number USCG–2012–0459 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant DeCarol Davis, U.S. Coast Guard Sector San Francisco, Waterways Management Division; telephone 415–399–7443, email *DeCarol.A.Davis@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
SLR Special Local Regulation

A. Public Participation and Request for Comments

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

1. Submitting Comments

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

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0459) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

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

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0459) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

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

B, Regulatory History and Information

The special local regulation for the San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration ("SLR") is established in 33 CFR 100.1105. This rule amends section (1), paragraph (c) of 33 CFR 100.1105 to expand the restricted area surrounding Navy parade vessels operating in the regulated area from 200 yards to 500 yards. The reason for this amendment is that we wish to align the SLR with the most up-to-date Coast Guard security enforcement procedures and incorporate language that adds to the transparency of the regulation for the public, enabling potential spectators of the San Francisco Fleetweek events to better understand, and prepare for, the Coast Guard's forthcoming enforcement actions.

The most recent Coast Guard security procedures, which generally call for a 500-yard restricted area around patrolled vessels, are still being evaluated to determine whether 500 yards can be effectively enforced given the level of on-water activity experienced during the San Francisco Bay Fleetweek events. During Fleetweek, there are substantially more recreational users on the water as spectators, and this crowding may ultimately require the Coast Guard to enforce a perimeter that is larger or smaller than the 500 yards prescribed in this rule. This amendment is being promulgated as an interim rule to implement immediate security measures needed for safety during Fleetweek events and to allow for subsequent changes to the rule should the restricted area surrounding parade vessels need to increase or decrease.

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(1)(B), we find that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be unnecessary.

The existing SLR, which this rule intends to amend, presently authorizes the Coast Guard to forbid and control the movement of vessels in the regulated areas defined in 33 CFR 100.1105(b). Although this rule amends the SLR to expand the restricted area surrounding the Navy parade vessel, this expansion remains within the previously defined regulated area in which the Coast Guard already has the authority to control vessel movement. This interim rule does not expand or contract the authorities promulgated in the existing SLR. The rule merely amends the current SLR language to reflect the most up-to-date Coast Guard enforcement procedures and provide the public notice of the enforcement actions that will be implemented within the existing regulated area. As this amendment provides the public with notice of the Coast Guard's enforcement strategies and does not change the scope of the SLR, we find it unnecessary to publish an NPRM.

C. Basis and Purpose

The San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration occurs annually in early October on the navigable waters of San Francisco Bay in California. The SLR for these events does not currently contain language that mirrors the

current Coast Guard security zone enforcement procedures. Coast Guard security zone enforcement actions require that there be an adequate space cushion surrounding U.S. naval vessels, so that Coast Guard enforcement assets may respond to security threats at an appropriate distance from U.S. naval vessels to prevent injury, loss of life or property damage. This amendment is necessary to reflect the enforcement actions needed to provide for the safety and security of the participating U.S. Navy parade vessels, spectators, event participants, and other waterways users from sabotage, subversive acts, accidents, criminal actions, or other causes of a similar nature.

The effect of this amendment will be to communicate to the public the Coast Guard's intention to further restrict general navigation in the vicinity of the Navy Fleetweek Parade of Ships, within the existing regulated area, from the start of the event until the conclusion of the event. When the special local regulation is activated, and thus subject to enforcement, this rule would limit the movement of vessels within 500 yards of any Navy parade vessel.

D. Discussion of the Interim Rule

The Coast Guard is amending paragraph (c)(1) of 33 CFR 100.1105, the special local regulation for the San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration. The amendment will increase the restricted area surrounding U.S. Navy parade vessels operating in regulated area "Alpha," which is defined in 33 CFR 100.1105(b)(1), from 200 yards to 500 yards.

Experiences during security zone enforcement operations, observations during boat tactics training, and discussions with Commanding Officers/Officers in Charge and tactical coxswains from Sector San Francisco's boat stations, has led the Coast Guard to determine that a 200-yard (183 meters) security zone is not adequate for protecting transiting vessels from sabotage, subversive acts, accidents, criminal actions, or other causes of a similar nature. A 500 yard (457 meters) security zone increases reaction time, allows proper assessment of the situation, and improves the ability of the tactical coxswains to properly execute protective measures.

The amendment will prohibit persons or vessels from entering or remaining within 500 yards of any Navy parade vessel.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This interim rule does not expand or contract the authorities promulgated in the existing SLR established in 33 CFR 100.1105. The rule merely amends the current SLR language to reflect the most up-to-date Coast Guard enforcement procedures and provide the public notice of the enforcement actions that will be implemented within the existing regulated area.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect this rule will affect the following entities, some of which may be small entities: owners and operators of vessels intending to fish, sightsee, transit, or anchor in the waters affected by the regulated areas. These regulations will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of the special local regulation via public notice to mariners or notice of implementation published in the **Federal Register**.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule will increase the restricted area surrounding U.S. Navy parade vessels operating in regulated area "Alpha," which is defined in 33 CFR 100.1105(b)(1), from 200 yards to 500 yards. This rule is categorically excluded from further review under paragraph 34(a) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows: 33 U.S.C. 1233.

■ 2. In § 100.1105 revise paragraph (c)(1) to read as follows:

§ 100.1105 San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration.

* * * * *

(c) * * *

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no person may enter or remain within 500 yards of any Navy parade vessel. No person or vessel shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area "Alpha."

* * * * *

Dated: July 12, 2012.

Cynthia L. Stowe,

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

[FR Doc. 2012–17946 Filed 7–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0666]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs four Multnomah County bridges: The Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, all crossing the Willamette River at Portland, OR. This deviation is necessary to accommodate the annual Portland Providence Bridge Pedal event. This deviation allows the bridges to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 5 a.m. August 12, 2012 through 12:30 p.m. August 12, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0666 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0666 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County, has requested a temporary deviation from the operating schedule for the Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, all crossing the Willamette River at Portland, OR. The requested deviation is to accommodate the annual Providence Bridge Pedal event. To facilitate this event, the draws of the bridges will be maintained in the closed-to-navigation positions as follows: the Broadway Bridge, mile 11.7; the Burnside Bridge, mile 12.4; Morrison Bridge, mile 12.8; and the Hawthorne Bridge, mile 13.1, need not open for vessel traffic from 5 a.m. August 12, 2012 until 12:30 a.m. August 12, 2012. Vessels which do not require bridge openings may continue to transit beneath these bridges during the closure period. The Broadway Bridge,

mile 11.7, provides a vertical clearance of 90 feet in the closed position, the Burnside Bridge, mile 12.4, provides a vertical clearance of 64 feet in the closed position, the Morrison Bridge, mile 12.8, provides a vertical clearance of 69 feet in the closed position, and the Hawthorne Bridge, mile 13.1, provides a vertical clearance of 49 feet in the closed position; all clearances are referenced to the vertical clearance above Columbia River Datum 0.0. The current operating schedule for all four bridges is set out in 33 CFR 117.897. The normal operating schedule for all four bridges state that they need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday. This deviation period is from 5 a.m. on August 12, 2012 through 12:30 p.m. August 12, 2012. The deviation allows the Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, across the Willamette River, to remain in the closed position and need not open for maritime traffic from 5 a.m. through 12:30 p.m. on August 12, 2012. The four bridges shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridges' operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridges will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: July 13, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–17945 Filed 7–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0926]

RIN 1625–AA09

Drawbridge Operation Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway in Lafourche Parish, Louisiana. The Regulations will now begin on August 1 vice August 15 of each year. In addition, one of the six bridges, mile 30.6, is to close 15 minutes earlier than the other bridges. These closures will facilitate the safe, efficient movement of staff, students and other residents within the parish.

DATES: This rule is effective on August 1, 2012.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [USCG–2011–0926], and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0926 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Jim Wetherington, D8 Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

On April 16, 2012, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulation; Lafourche Bayou, LA," in the **Federal Register** (77 FR 22520). We received one comment on the proposed rule and it was in favor of the change. We also received a request for an additional change specific to the operating schedule for the SR 308 (South Lafourche (Tarpon)) Vertical Lift Bridge, mile 30.6, at Galliano, Lafourche Parish, LA. The staff, teachers and students of South Lafourche High School requested that the start time for this bridge regulation be 15 minutes earlier, 6:45 a.m. as opposed to 7 a.m., to accommodate the school traffic in this area during school hours. Due to this request for further modification to the drawbridge operations not being included as part of the original NPRM, it was determined that the Coast Guard would reopen the NPRM for additional comments and provide the public information regarding the additional modification request. On June 15, 2012, a notice reopening the comment period for 20 days was published in the **Federal Register** (77 FR 35897). We received no comments on the modified proposed rule. No public meeting was requested, and none was held.

The Coast Guard is issuing this final rule without a full 30 days before its effective date under the Administrative Procedure Act (APA) (5 U.S.C. 553(d)(3)). This provision authorizes an agency to issue a rule without a full 30 days notice before its effective date when the agency for good cause finds that procedure "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. A standard 30 day comment period was given for the NPRM. Only one comment was received and it was in support of the change. After the receipt of the additional request the comment period was re-opened for an additional 20 days to allow for further comment. We received no further comments on this action. It would be contrary to the public interest to delay the effective date of this rule by providing a full 30 days notice. The school year starts on or about August 1 and this final rule establishes the operating schedules for the six bridges to coincide with the school year and safety needs for students and school traffic.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 170.1 which collectively authorize the Coast Guard to regulate drawbridge operations.

The U.S. Coast Guard, at the request of the Louisiana Department of Transportation and Development (LDOTD), in conjunction with the Lafourche Parish Council, is modifying the existing operating schedules of six bridges across Bayou Lafourche south of the Gulf Intracoastal Waterway in Lafourche Parish, Louisiana. The six bridges include: Golden Meadow Vertical Lift Bridge, mile 23.9; the Galliano Pontoon Bridge, mile 27.8; the SR 308 (South Lafourche (Tarpon)) Vertical Lift Bridge, mile 30.6; the Cote Blanche Pontoon Bridge, mile 33.9; the Cutoff Vertical Lift Bridge, mile 36.3; and the Larose Pontoon Bridge, mile 39.1. The modification of the existing regulations will allow these bridges to operate on their school year closing schedule from August 1 through May 31. Changes in the scheduled beginning of the school year to before August 15 made the regulation confusing to mariners, the bridge operators and the public. The change in the effective date of this rule will allow for most date changes that are inherent to the school scheduling process and be in the best interest of the public and commercial entities. Additionally, the staff, faculty and student body of South Lafourche High School requested that the SR 308 (South Lafourche (Tarpon)) Vertical Lift Bridge, mile 30.6, from now on called the Tarpon Bridge, close 15 minutes earlier, at 6:45 a.m. as opposed to 7 a.m. The Tarpon Bridge is part of a main route to and from South Lafourche High School. The school's students, staff, and faculty face a traffic delay and back up with the current schedule allowing marine traffic through until just before 7 a.m. This traffic delay causes a 15-minute back up leading to tardiness of faculty, staff and students. The request to add an additional 15 minutes to the morning closure period will allow for the students and faculty to better transit across the bridge in the morning and will not have a significant effect on the vessels using the waterway.

At all other times, the bridges will open on signal, or in accordance with their published regulation, for the passage of vessels.

C. Discussion of Comments, Changes and the Final Rule

One comment was received with regards to the NPRM from a concerned citizen who stated that the change made sense. Based upon this comment, no changes were made to the proposed regulation. However, due to the additional request to further modify the operation of the Tarpon Bridge, the comment period was reopened. No comments were received in reference to the reopening for comment.

This final rule modifies the starting date of existing bridge regulations from August 15 to August 1 to coincide with local school schedules and increases the daily regulation of the Tarpon Bridge by 15 minutes. The only changes in the final rule from those in the proposed regulatory text are the addition of the words "unless otherwise indicated" after the regulation times. Under the Tarpon Bridge, subpart (3) in the regulation, the inclusion of specific regulation times has also been made.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

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

This rule is not a significant regulatory action because it merely modifies the starting date of existing bridge regulations to coincide with local school schedules and increases the daily regulation of the Tarpon Bridge by only 15 minutes.

The changes to these bridge regulations will allow for better vehicle traffic service during peak school hours throughout the year. The new starting date allows for the flexibility needed to accommodate an ever changing school calendar and the new starting time for the Tarpon Bridge allows for the safe and timely arrival of students and staff while still providing vessel traffic a consistent schedule. This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the bridges Monday through Friday except Federal holidays during the hours of 7 a.m. to 8:30 a.m., from 2 p.m. to 4 p.m. and from 4:30 p.m. to 5:30 p.m. from August 1 through August 14 and owners or operators of vessels intending to transit the Tarpon Bridge between 6:45 a.m. and 6:59 a.m.

This action will not have a significant economic impact on a substantial number of small entities because the change only adds two weeks to the current regulation and 15 minutes to the current Tarpon Bridge regulation. The current rule has been in effect for these vessels and waterway users since 2006. This change extends the effective period for the known restrictions to coincide with the full school year and allow for the safe and expedient arrival of staff faculty and students as well as other bridge users, which was the original intent of this rule.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. In § 117.465, paragraphs (a) introductory text and (a)(3) are revised to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from August 1 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m. and from 4:30 p.m. to 5:30 p.m., unless otherwise indicated:

* * *

(3) SR 308 (South Lafourche (Tarpon)) Bridge, mile 30.6, at Galliano, need not open for the passage of vessels from August 1 through May 31, Monday through Friday except Federal holidays from 6:45 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m. and from 4:30 p.m. to 5:30 p.m.

* * * * *

Dated: July 13, 2012.

Peter Troedsson,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District Acting.

[FR Doc. 2012–17949 Filed 7–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0588]

RIN 1625–AA00

Safety Zone; Electric Zoo Fireworks, East River, Randall's Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the East River in the vicinity of Randall's Island, NY for a fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of the East River before, during, and immediately after the fireworks event.

DATES: This rule will be effective from 10:30 p.m. on August 31, 2012 until 11:40 p.m. on September 2, 2012. The rule will be enforced daily from 10:30 p.m. to 11:40 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0588]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354–4163, email *Kimberly.A.Farnsworth@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information about the event was not received in time to publish a NPRM followed by a final rule before the effective date, thus making the publication of a NPRM impractical. The Coast Guard received the information about the event on June 8, 2012. Any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest, since immediate action is needed to provide for the safety of life and property on navigable waters from the hazards associated with fireworks including unexpected detonation and burning debris.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

This temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

C. Discussion of the Final Rule

This rule establishes a temporary safety zone on the waters of the East River in the vicinity of Randall's Island, NY. All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) New York or the designated representative during the enforcement of the temporary safety zone. Entering into, transiting through, or anchoring within the temporary safety zone is prohibited unless authorized by the COTP New York, or the designated representative.

Based on the inherent hazards associated with fireworks, the COTP New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. This temporary safety zone will restrict vessels from a portion of the East River around the location of the fireworks launch platform before, during, and immediately after the fireworks display.

The Coast Guard determined that this regulated area will not have a significant impact on vessel traffic due to its temporary nature and limited size and the fact that vessels are allowed to transit the navigable waters outside of the regulated area.

Advanced public notifications will also be made to the local mariners through appropriate means, which will include, but are not limited to, the Local Notice to Mariners as well as Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The Coast Guard's implementation of this temporary safety zone will be of short duration and is designed to minimize the impact to vessel traffic on the navigable waters. This temporary safety zone will only be enforced for approximately 70 minutes, in the late evening. Due to the location, vessels will be able to transit around the zone in a safe manner.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the navigable waters in the vicinity of the marine event during the effective period.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for 70 minutes; late at night when vessel traffic is low, vessel traffic could pass safely around the safety zone, and the Coast Guard will notify mariners before activating the zone by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

■ 2. Add § 165.T01–0588 to read as follows:

§ 165.T01–0588 Safety Zone; Electronic Zoo Fireworks, East River, Randall's Island, NY.

(a) *Regulated Area.* The following area is a temporary safety zone: all navigable waters of the East River within a 164-yard radius of the fireworks barge located in approximate position 40°47′34.14″ N, 073°55′48.71″ W, in the vicinity of Randall's Island, NY, approximately 200 yards west of the Southern tip of Randall's Island Park, Randall's Island, NY.

(b) *Effective Dates and Enforcement Periods.* This rule will be effective from 10:30 p.m. on August 31, 2012 until 11:40 p.m. on September 2, 2012. The rule will be enforced daily from 10:30 p.m. to 11:40 p.m.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing

light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(6) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

Dated: July 6, 2012.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2012–17947 Filed 7–23–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2011–0093; FF09A30000 123 FXIA16710900000R4]

RIN 1018–AX96

Endangered and Threatened Wildlife and Plants; Publishing Notice of Receipt of Captive-Bred Wildlife Registration Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending the regulations that implement the Endangered Species Act (Act) by establishing public notice-and-comment procedures for applications to conduct certain otherwise-prohibited activities under the Act that are authorized under the Captive-Bred Wildlife (CBW) regulations. This action adds procedural requirements to the processing of applications for registration under the CBW regulations. Notices of receipt of each application will be published in the **Federal Register**, and the Service will accept public comments on each application for 30 days. If the registration is granted, the Service will publish certain findings in the **Federal Register**. In addition, for persons meeting the criteria for registering under the CBW Program, each registration will now remain effective for 5 years rather than 3 years.

DATES: This rule becomes effective on August 23, 2012.

ADDRESSES: You may obtain information about permits or other authorizations to carry out otherwise-prohibited activities by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703–358–2104 or (toll free) 800–358–2104; facsimile: 703–358–2281; email: *managementauthority@fws.gov;* Web site: *http://www.fws.gov/international/index.html.*

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–2104; fax 703–358–2281. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and its implementing regulations prohibit any person subject to the jurisdiction of the United States from conducting certain activities unless authorized by a permit. These activities include take, import, export, and interstate or foreign commerce of fish or wildlife species listed as endangered or threatened under the Act. In the case of endangered species, the Service may permit otherwise-prohibited activities for scientific research or enhancement of the propagation or survival of the species. In the case of threatened species, regulations allow permits to be issued for the above-mentioned purposes, as well as zoological, horticultural, or botanical exhibition; education; and special purposes consistent with the Act.

In 1979, the Service published the Captive-Bred Wildlife (CBW) regulations at 50 CFR 17.21(g) (44 FR 54002, September 17, 1979) to streamline Federal permitting requirements and facilitate captive breeding of endangered and threatened species under certain prescribed conditions. Specifically, under these regulations, the Service promulgated a general regulatory permit to authorize persons to take; export or reimport; deliver, receive, carry, transport, or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce endangered or threatened wildlife bred in captivity in the United States. Qualifying persons and facilities seeking such authorization under the regulations are required to register with the Service. By establishing a more flexible management framework for regulating routine activities related to captive propagation, these regulations have benefited wild populations by, for example, increasing sources of genetic stock that can be used to bolster or reestablish wild populations, decreasing the need to take stock from the wild, and providing for research opportunities.

The authorization granted under the CBW regulations is limited by several conditions. These conditions include:

(1) The wildlife is of a species having a natural geographic distribution not including any part of the United States, or the wildlife is of a species that the Director has determined to be eligible in accordance with 50 CFR 17.21(g)(5);

(2) The purpose of authorized activities is to enhance the propagation or survival of the affected species;

(3) Activities do not involve interstate or foreign commerce, in the course of commercial activity, with respect to nonliving wildlife;

(4) That each specimen of wildlife to be reimported is uniquely identified by a band, tattoo, or other means that was reported in writing to an official of the Service at a port of export prior to the export from the United States; and

(5) Any person subject to the jurisdiction of the United States who engages in any of the authorized activities does so in accordance with 50 CFR 17.21(g) and with all other applicable regulations.

The regulations also specify application requirements for registration that are designed to provide the Service with information needed to determine whether the applicant has the means to enhance the propagation or survival of the affected species. For example, the application must include a description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered under the registration; documentation depicting the facilities in which the

subject wildlife will be maintained must also be included.

With this final rule, the Service is amending the CBW regulations to provide the public with notice of receipt of applications for CBW registration and an opportunity to comment on an applicant's eligibility to register under the regulations. If we determine that the registration should be granted, we will notify the public by publishing our findings in the **Federal Register** that each registration was applied for in good faith, will not operate to the disadvantage of the affected species, and is consistent with the purposes and policy set forth in section 2 of the Act. These procedures will apply to both original and renewal applications for registration, as well as applications for amendment of the registration. In addition, we will make information we receive as part of each application available to the public upon request, including, but not limited to, information needed to assess the eligibility of the applicant, such as the original application materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

By incorporating these procedural amendments to the CBW regulations, the Service will increase transparency and openness in the CBW registration process, consistent with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the Presidential Memorandum of January 21, 2009, which encourage government agencies to establish a system of transparency, public participation, and collaboration by disclosing information to the public. In addition, with these amendments, we believe that increased public participation in the CBW registration process will lead to better decisions by assisting the Service in assessing whether the applicants are capable of enhancing the propagation or survival of the species. By incorporating these procedures to increase transparency and openness in the registration process, interested persons' perceptions of the fairness of the registration process will improve, as will their acceptance of our ultimate determination as to whether the registration should be granted.

This rule also announces that the Service will extend the validity of CBW registrations from 3 years to 5 years. This discretionary action is being implemented to reduce the paperwork burden on CBW holders, as well as eliminate redundant reviews by the Service of CBW applications. One condition of all CBW registrations is the requirement that CBW holders provide the Service with an annual report of all activities that have been conducted during the previous calendar year. These reports are reviewed for consistency, including comparing reports from different CBW holders that reported any exchanges. The Service has found that, with the receipt of these reports, we have sufficient oversight of activities to increase the period for which a CBW registration is valid. With the combination of annual reports, renewal applications being submitted every 5 years, and, if necessary, physical inspection of CBW holder's facilities by the Service or other State and Federal agencies, the Service can successfully evaluate the merits of a registered facility. Therefore, we have concluded that requiring CBW holders to re-apply every 3 years is unnecessary.

Summary of Comments and Our Responses

In our proposed rule (February 21, 2012; 77 FR 9884), we asked interested parties to submit comments or suggestions regarding the proposal to incorporate a public comment period into the regulations at 50 CFR 17.21(g). The comment period for the proposed rule lasted for 30 days, ending March 22, 2012. We received 14 individual comments during the comment period. Comments were received from 4 nongovernmental organizations, 3 businesses, and 7 individuals. Of the commenters, two supported the proposal to publish the receipt of CBW applications in the **Federal Register** and provide for a 30-day comment period, and 12 opposed the proposal. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: The majority of commenters expressed concern that the publication of names of CBW applicants and locations of facilities would raise the risk of attacks on breeders or on the animals, putting these individuals or organizations at risk of theft or harassment by individuals opposed to the activities being conducted by the applicant. Several commenters believed that activists would use the permit process as a way to delay or block activities through legal challenges. One commenter felt that it would be necessary to retain a lawyer when applying for a CBW registration to fight against "activist organizations" that would attempt to block or delay the approval of their application.

Our Response: It is true that, with the publication of a notice announcing the receipt of CBW applications, the names of applicants and the city in which they reside will be published. The **Federal Register,** however, does not publish addresses or other private information. While individuals that are interested in reviewing the applicants can request a copy, any private information, including street addresses of individuals, will be redacted or removed. While it is possible that individuals or organizations could harass CBW applicants, such actions may be illegal and, if so, the individuals carrying out those actions may be prosecuted under relevant laws (e.g., trespass). However, the Service does not believe that this potential for illegal harassment is sufficient grounds for failing to publish the receipt of CBW applications. As previously stated, the purpose of publishing the receipt of CBW applications is to allow the public the opportunity to provide the Service with relevant information about the applying facilities and their operations. In addition, for many CBW applicants, information about their facilities, as well as addresses and contact information, have been made readily available to the public by the facilities themselves through other sources, including through advertising on the Internet, in trade magazines, and in other publications.

Issue 2: One commenter felt that politically driven groups would submit biased information, or information that would only support their particular agenda, thus giving the Service an inaccurate picture of a facility's ability to meet the issuance criteria under the CBW regulations.

Our Response: The Service has a long history of receiving comments addressing ESA permit applications. We considered only substantive information that assists us in making sound decisions. Where possible, we attempt to obtain additional information to corroborate any information that may appear biased or based on a particular organization's or individual's views. While we welcome all comments, the comments do not constitute a "popularity contest" in which the majority of commenters dictate the Service's decisions on permit issuance.

Issue 3: Several commenters expressed a concern that the change to the regulation would make the CBW program more restrictive, causing some current CBW holders, as well as future CBW applicants, to discontinue activities with endangered species, thus reducing the potential for conservation-based breeding. Several suggested that, with this reduction in registrants, the conservation benefits provided by CBW holders would be reduced. They were concerned that, with fewer

organizations registering, activities authorized under the CBW program would be driven underground, resulting in an increase in inbreeding or diminished conservation value of the breeding activity. One commenter called for a "broader, more inclusive" system that reduces the burdens on CBW applicants. Several commenters expressed a view that, with additional regulatory requirements and financial burden on applicants, few individuals and organizations would apply to register under the CBW program.

Our Response: The Service encourages individuals or facilities that wish to conduct conservation-based breeding programs with endangered species to apply to be part of the CBW program. We do not believe, however, that the publication of a **Federal Register** notice announcing the receipt of a CBW application, or providing the public an opportunity to comment on the merits of an application, will restrict the CBW program or reduce the number of individuals or organizations that submit applications. Further, we do not believe that this rule will increase the regulatory or financial burden on current or potential CBW holders. While there will be an increase in the processing time by adding a 30-day comment period, we do not see that this creates any significant economic or regulatory burden on CBW holders or applicants. Further, we do not believe that this will result in activities being driven underground. This regulatory change is only to provide the public an opportunity to comment on CBW applications. No new regulatory or paperwork burdens are imposed on applicants or registrants. We do not believe that law-abiding breeding operations will begin conducting illegal activities solely to avoid having the Service notify the public that an application has been received.

Issue 4: One commenter stated that the Service already had a sufficient level of regulation in place to adequately carry out the purposes of the CBW program.

Our Response: These changes to the CBW regulations will not change how the CBW program is managed or the requirements placed on CBW holders. We do not believe that publishing the receipt of all CBW applications will increase the regulatory burden on any applicant or CBW holder. The intent of the revision to the CBW regulations is to increase the transparency of the CBW program and to encourage the public to provide us with the best available information about an applicant or, possibly, about requirements for keeping the particular species involved or some other information that would be relevant to evaluating the application.

Issue 5: The two commenters who supported the proposed change to the regulation expressed concerns that the CBW program was allowing for activities that were not consistent with the Act. They called for greater oversight of CBW holders and commercial activities to ensure that CBW holders were carrying out conservation efforts and that they were conducting their activities in a humane manner.

Our Response: This change to the regulation is intended to provide the public an opportunity to comment on the merits of CBW applications received by the Service. The rule does not address or alter any current practices carried out by the Service on how CBW holders are regulated. While this comment is outside the scope of the rule, the Service is interested in ensuring that any operation that is registered under the CBW program uses proper breeding methods and humane treatment of their animals. To the extent possible, the Service does determine whether a breeding operation is in compliance with all regulations and laws addressing humane treatment of animals and that the activities being carried out by the operation meet the purposes of the Act. Inhumane treatment which falls within the definition of "harass" (50 CFR 17.3) would be considered a "take" under the Act and thus a violation if the activity had not specifically been authorized. Providing for a 30-day comment period will allow the public to identify any concerns that they may have and provide the Service with substantive information to support any claims of inappropriate activities.

Issue 6: One commenter, while agreeing with the action, pointed out that the Service does not need to propose a change to the CBW regulations to increase the validity period of a CBW registration from 3 to 5 years. Another commenter objected to this change because it would weaken the Service's ability to carry out appropriate oversight of registered facilities. The commenter was concerned that this increase would reduce the level of oversight that we have over CBW holders, making it easier for them to carry out activities that would be outside the purposes for which the registration was granted.

Our Response: The first commenter is correct that no changes need to be made to the regulations to extend the validity period to 5 years, nor did the Service propose such a change to actual regulations. The proposed rule merely provided an opportunity for the Service to announce that it would take this step, as part of its discretionary permit-processing actions, to reduce the application burden on CBW holders in a manner that will not lower the Service's ability to ensure that CBW holders are complying with all aspects of their registration. Extending the period of validity of a CBW registration will not have a significant effect on the Service's ability to monitor registrants because each CBW holder must submit an annual report outlining all activities carried out during the previous year. The annual reports are reviewed to ensure that the reported activities comply with the Act and any permit conditions placed on the registered facility. If, when reviewing reports, the Service discovers some concerns or issues with a CBW holder, we have the ability to take action at that time. In addition, if necessary, the Service or other State or Federal agencies can conduct physical inspections of a CBW holder to investigate any concerns. Further, many CBW holders apply for authorization to conduct other activities that are outside the scope of their CBW registration. In those instances, the Service has a second opportunity to evaluate the merits of the new application and determine if any concerns regarding their CBW registration exist. Extending the validity time of a CBW registration means that the holder only needs to reapply every 5 years, reducing their workload to reapply. Extending the validity time also reduces unnecessary workload currently faced by the Service in processing CBW applicants every 3 years.

Issue 7: Several commenters did not believe that the Service provided the public with any evidence that publishing a notice announcing the receipt of a CBW application would improve the effectiveness of the CBW program. Further, these commenters saw the change to be unnecessary and not represent good policy. One commenter expressed their belief that there was no need to notify the public of the receipt of CBW applications and allow for a comment period because the applications would be available through Freedom of Information Act (FOIA) requests submitted to the Service by interested parties.

Our Response: We disagree with the view that this change in the regulation is unsupported and is bad policy. Allowing the public an opportunity to comment on the merits of an application increases the level of transparency that the Service can offer in this matter, and therefore should strengthen the CBW

program. The comment regarding the availability of CBW applications through the FOIA process is correct. However, FOIA requesters must first be aware that specific files are available to request or must make such broad and vague requests that our efforts to meet these requests become very time-consuming. By publishing the receipt of CBW applications, we are providing potential FOIA requesters the opportunity to satisfy any potential interest in a file before a FOIA request is necessary or to better define their FOIA request to minimize the burden on the Service.

Issue 8: Two commenters felt this regulation fails to meet the requirements of Executive Order 13576. One commenter claimed this regulation accomplishes the opposite of the Executive Order, whereas another stated that the Executive Order is irrelevant to permits.

Our Response: The Service disagrees with these statements. The purpose of the Executive Order is to increase transparency across all aspects of government, including the Service's permitting process. While the Executive Order does focus on rulemaking, we believe that providing the public with the opportunity to comment on applications that the Service receives does improve our permit processing and can provide a benefit to the conservation work that applicants and the Service are carrying out through the CBW program.

Issue 9: One commenter stated that the Act is an archaic piece of legislation and needs "a total revamp."

Our Response: Whether changes should be made to the legislation is a matter for Congress to address and is outside the scope of this rulemaking.

Issue 10: Many commenters expressed a view that this change to the CBW regulations would create unnecessary delays in the processing of applications. One commenter stated that increasing processing time by 35–40 days is unrealistic. Several commenters felt that public notice will also drastically increase processing time if comments that are received result in the Service making additional inquiries to investigate any claims made during the public comment period. Several commenters expressed the opinion that CBW applications do not need to be given the same level of scrutiny as applications for the import or export of animals from the wild, because CBW applications only deal with captive wildlife.

Our Response: Opening a 30-day comment period will certainly increase the overall processing time for first-time CBW applications, thus delaying the authorization of any activities under the Act until the application process is complete. The comment period would typically add the 35 to 40 days that one commenter identified. However, once a CBW has been approved, providing for a comment period on a renewal application will not result in a registered facility stopping all activities previously approved under the CBW registration. The Service's permitting regulations (50 CFR part 13) allow for an applicant who is renewing or amending a registration to continue carrying out previously approved activities while the Service is considering their application request, provided that they submit their renewal application at least 30 days before their current registration expires. This means that a facility that is currently registered could continue carrying out previously approved activities while the Service considers their renewal request without a break in activities, such as interstate commerce. This will not apply to new requests, including the addition of new species to an existing CBW registration. Therefore, providing a public comment period should not significantly affect current CBW holders, and while increasing the processing time for new CBW applicants, the increase is not significant and should result in an improvement in the basis for issuing CBW registrations because we will have provided the public with an opportunity to augment the information used to evaluate CBW applications.

The commenters who were concerned that comments from the public could affect their CBW applications are correct, if the public provides thoughtful comments that provide substantive information that either supports or questions the merits of an application. That is the very purpose of a comment period. We would like to assure the commenters, however, that the receipt of a comment on an application does not mean that all processing is stopped or that we will not verify information provided by a commenter, whether in support or opposition to an application. The Service will evaluate the factual basis of each comment and the scientific or commercial value of the information provided. Comments that express only a personal opinion do not have the same value as comments that provide clear scientific information relating to the merits of an application.

Finally, the Act treats all listed species the same whether they are captive-bred or removed from the wild. All applications for permits or registrations are evaluated according to the issuance criteria established in our regulations at Chapter I of Title 50 of the Code of Federal Regulations.

Issue 11: One commenter accused FWS of "turning a blind eye" to the benefits to conservation that U.S.-based captive-breeding and display programs provide to listed species.

Our Response: The Service recognizes that captive breeding can provide a benefit to listed species by increasing the scientific knowledge of a species' behavior or biology. Further, conservation-based breeding programs can provide animals for reintroduction programs and provide a level of assurance against catastrophic events that could adversely affect wild populations. The Service is not turning a "blind eye" to any conservation value a captive-breeding program can provide; we are only working to ensure that any otherwise-prohibited activities that are authorized provide conservation value. We believe that providing an opportunity for the public to comment will improve our application review process.

Issue 12: Several commenters stated that they had also commented on another proposed rule published by the Service on August 22, 2011, that would remove the "generic" tiger from a list of specimens that do not require facilities that hold them to register with the Service under the CBW program in order to carry out otherwise-prohibited activities. These commenters expressed concern that the combination of the two regulatory changes would adversely affect their activities.

Our Response: The Service is still evaluating the comments received during the two comment periods provided for the "generic" tiger proposed rule and will finalize our decision in the coming months. While there are some similarities between the "generic" tiger rule and this rule, they are separate actions being taken by the Service and are being treated as such. Comments made during the comment period for the "generic" tiger proposed rule cannot be considered part of the comments received for this proposed rule.

We have, therefore, made no changes to the proposed rule as a result of the comments received.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563): Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved in activities authorized under the CBW program would be considered small as defined by the SBA.

This rule requires the Service to publish notices in the **Federal Register** announcing the receipt of all CBW applications and provide the public with a 30-day comment period to provide the Service with any relevant information about the applicant or their operation. In addition, the rule requires the Service to publish a notice in the **Federal Register** of specified findings for approved registrations. The regulatory change is not major in scope and will create no financial or paperwork burden on the affected members of the public. In fact, the extension of the effective period of a CBW registration from 3 to 5 years, taken as a discretionary action under the Service's permitting procedures, will result in a reduction of the paperwork burden on the public because of the reduced frequency of completing a renewal application.

We, therefore, certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act: This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more. This rule codifies a public notice-and-comment process for the receipt of CBW applications and requires the publication of certain findings for registrations granted under the CBW regulations. The Service will publish no more than two notices in the **Federal Register**, and will require nothing from the applicant as far as additional cost or paperwork. This rule will not have a negative effect on this part of the economy. It will affect all businesses, whether large or small, the same. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule will not result in an increase in the number of applications for registration to conduct otherwise-prohibited activities with endangered and threatened species.

c. Will not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

b. This rule will not produce a Federal requirement of $100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this rule would not have significant takings implications. A takings implication assessment is not required. This rule is not considered to have takings implications because it allows individuals to register under the CBW Registration program when issuance criteria are met.

Federalism: This revision to part 17 does not contain significant Federalism implications. A Federalism summary impact statement under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of subsections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Number 1018–0093, which expires February 28, 2014. This rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA): The Service has determined that this action is a regulatory change that is administrative and procedural in nature. As such, the amendment is categorically excluded from further NEPA review as provided by 43 CFR 46.210(i) of the Department of the Interior Implementation of the National Environmental Policy Act of 1969. No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; May 4, 1994) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, and use. This rule will not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a

significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Captive-bred wildlife, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we are amending part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

■ 2. Amend § 17.21 by revising paragraph (g)(3) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(g) * * *

(3) Upon receipt of a complete application for registration, or the renewal or amendment of an existing registration, under this section, the Service will publish notice of the application in the **Federal Register**. Each notice will invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. All information received as part of each application will be made available to the public, upon request, as a matter of public record at every stage of the proceeding, including, but not limited to, information needed to assess the eligibility of the applicant, such as the original application, materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

(i) At the completion of this comment period, the Director will decide whether to approve the registration. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, whether the expertise, facilities, or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section.

(ii) If the Director approves the registration, the Service will publish notice of the decision in the **Federal Register** that the registration was applied for in good faith, that issuing the registration will not operate to the disadvantage of the species for which registration was sought, and that issuing the registration will be consistent with the purposes and policy set forth in section 2 of the Act.

(iii) Each person so registered must maintain accurate written records of activities conducted under the registration and allow reasonable access to Service agents for inspection purposes as set forth in §§ 13.46 and 13.47 of this chapter. Each person so registered must also submit to the Director an individual written annual report of activities, including all births, deaths, and transfers of any type.

* * * * *

Dated: July 17, 2012.

Eileen Sobeck,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–17944 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 77, No. 142
Tuesday, July 24, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0722; Directorate Identifier 2011–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of alternating current (AC) generator failures in-service due to incomplete fusion in the weld joint of the rotor band assembly. This proposed AD would require inspecting the AC generator to determine the part number, and replacing the AC generator if necessary. We are proposing this AD to prevent rotor windings from coming in contact with the generator housing, which could result in debris contaminating and potentially blocking the engine oil scavenge system, leading to loss of oil pressure and an in-flight shutdown of the engine.

DATES: We must receive comments on this proposed AD by September 7, 2012.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7330; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0722; Directorate Identifier 2011–NM–188–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–22, dated July 13, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several reports of AC Generator failures in-service. The root cause has been attributed to an incomplete fusion in the weld joint of the AC Generator rotor band assembly. If not rectified, the rotor band may fail allowing the rotor windings to come in contact with the generator housing. The resulting debris could contaminate and potentially block the engine oil scavenge system, leading to loss of oil pressure and an in-flight shutdown of the engine.
>
> Bombardier has issued Service Bulletin (SB) 84–24–45 to inspect, [replace with modified or new AC generator] and re-identify the affected AC generators to a new part number (P/N) 1152218–6 unit in order to rectify the problem and ensure integrity of the affected units.

The required action is replacing the AC generator with a modified or new AC generator. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–24–45, dated January 13, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

TCCA AD CF–2011–22, dated July 13, 2011, prohibits installation of certain part numbers following the accomplishment of the replacement required by paragraph (g) of this AD. This AD prohibits installation of those part numbers as of the effective date of this AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 83 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,110, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0722; Directorate Identifier 2011–NM–188–AD.

(a) Comments Due Date

We must receive comments by September 7, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 through 4338 inclusive, with Honeywell alternating current (AC) generator part number (P/N) 1152218–3, 1152218–4 or 1152218–5 installed.

(d) Subject

Air Transport Association (ATA) of America Code 24: AC generator.

(e) Reason

This AD was prompted by reports of alternating current (AC) generator failures in-service due to incomplete fusion in the weld joint of the rotor band assembly. We are issuing this AD to prevent rotor windings from coming in contact with the generator housing, which could result in debris contaminating and potentially blocking the engine oil scavenge system, leading to loss of oil pressure and an in-flight shutdown of the engine.

(f) Compliance

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

(g) Inspection and Replacement

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Inspect the left and right AC generators to determine if the AC generator has a part number identified in step 3.B.(2) of the Accomplishment Instructions of Bombardier Service Bulletin 84–24–45, dated January 13, 2011, or has P/N 1152218–3. If an AC generator has a part number identified in Bombardier Service Bulletin 84–24–45, dated January 13, 2011, or has P/N 1152218–3, before further flight, replace the AC generator with a modified or new AC generator having P/N 1152218–6, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–24–45, dated January 13, 2011.

(h) Parts Installation Prohibition

After the effective date of this AD, no person may install an AC generator with a P/N 1152218–5, 1152218–4, or 1152218–3 on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2011–22, dated July 13, 2011; and Bombardier Service Bulletin 84–24–45, dated January 13, 2011; for related information.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series

Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 13, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–17967 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0652; Directorate Identifier 2010–NM–045–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all The Boeing Company Model MD–90–30 airplanes. That NPRM proposed to require repetitive eddy current high frequency (ETHF) inspections for cracking on the aft side of the left and right wing rear spar lower caps at station Xrs = 164.000, further ETHF inspections if cracks are found, and repair if necessary. The NPRM also proposed repetitive post-repair inspections, and repair if necessary. That NPRM was prompted by reports of cracks of the wing rear spar lower cap at the outboard flap, inboard drive hinge at station Xrs=164.000. This action revises that NPRM by adding repetitive post-repair inspections, and corrective action if necessary. We are proposing this supplemental NPRM to detect and correct cracking of the left and right rear spar lower caps, which could result in fuel leaks and damage to the wing skin or other structure, and consequent loss of the structural integrity of the wing. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by September 7, 2012.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone (562) 627–5233; fax (562) 627–5210; email: *roger.durbin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0652; Directorate Identifier 2010–NM–045–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to all The Boeing Company Model MD–90–30 airplanes. That NPRM published in the **Federal Register** on July 8, 2011 (76 FR 40288). That NPRM proposed to require repetitive eddy current high frequency (ETHF) inspections for cracking on the aft side of the left and right wing rear spar lower caps at station Xrs=164.000, further ETHF inspections if cracks are found, and repair if necessary. The NPRM also proposed repetitive post-repair inspections, and repair if necessary.

Actions Since Previous NPRM (76 FR 40288, July 8, 2011) Was Issued

Since we issued the previous NPRM (76 FR 40288, July 8, 2011), we have determined that it is necessary to add repetitive inspections for cracking on the wing rear spar lower caps at station Xrs=164.000 after the splice repair is done. The replacement spar cap is susceptible to fatigue cracking because its design is the same as that of the original spar cap.

Comments

We gave the public the opportunity to comment on the previous NPRM (76 FR 40288, July 8, 2011). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Inspection

Boeing requested that we revise the original NPRM (76 FR 40288, July 8, 2011) to require an ETHF inspection on any splice repair within 30,000 flight cycles after the repair. Boeing explained that neither Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011 (which was cited as the appropriate source of service information for the original

NPRM), nor the original NPRM itself addresses inspection of the replaced spar cap segment for fatigue cracking at flap hinge station Xrs=164.000. Boeing noted that the design of the original and replacement spar caps is the same, so the replacement spar cap is also susceptible to the same fatigue cracking issue. Boeing suggested that this change would affect paragraphs (h)(1)(ii), (h)(2)(ii), (h)(3)(ii), (i)(1), (i)(2)(i)(C), (i)(2)(ii), and (i)(3) of the original NPRM.

Boeing also explained that they will revise Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011, as soon as possible.

We agree with the request, for the reasons provided by the commenter. We have added this post-repair inspection in new paragraph (j) of this AD, and re-identified subsequent paragraphs accordingly.

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the original NPRM (76 FR 40288, July 8, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Supplemental NPRM and the Service Information."

Differences Between the Supplemental NPRM and the Service Information

Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011, does not specify corrective actions if cracking is found during any inspection of repaired areas, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 51 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340 per inspection cycle.	N/A	$340 per inspection cycle	$17,340 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0652; Directorate Identifier 2010–NM–045–AD.

(a) Comments Due Date

We must receive comments by September 7, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracks of the wing rear spar lower cap at the outboard flap, inboard drive hinge at station

Xrs=164.000. We are issuing this AD to detect and correct cracking of the left and right rear spar lower caps, which could result in fuel leaks and damage to the wing skin or other structure, and consequent loss of the structural integrity of the wing.

(f) Compliance

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

(g) Repetitive Inspections

Before the accumulation of 30,000 total flight cycles, or within 10,000 flight cycles after the effective date of this AD, whichever occurs later, do an eddy current high frequency (ETHF) inspection for cracking on the aft side of the left and right wing rear spar lower caps at station Xrs=164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. If no cracking is found on the left or right wing rear spar lower cap, repeat the inspection on the affected wing rear spar lower cap thereafter at intervals not to exceed 2,550 flight cycles. Doing a repair of the left or right wing rear spar lower cap required by this AD terminates the repetitive inspection required by this paragraph for that side only.

(h) Further Inspections if Cracking of Two Inches or Less Is Found and Not in the Rear Spar Lower Cap, Repair, and Repetitive Post-Repair Inspections

If, during any inspection required by paragraph (g) of this AD, any crack is found that is two inches or less and not in the rear spar lower cap forward horizontal leg radius: Before further flight, do an ETHF inspection for cracking on the affected wing rear spar upper cap at station Xrs = 164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(1) If no crack is found in the rear spar upper cap during the inspection required in paragraph (h) of this AD, do the actions specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Option 1: Before further flight, do a doubler repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 13,500 flight cycles after doing the doubler repair, do an ETHF inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) Option 2: Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an eddy current low frequency (ETLF) inspection and an ultrasonic (UT) inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If any crack that is two inches or less is found in the rear spar upper cap during the inspection required by paragraph (h) of this AD, do the actions specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Option 1: Before further flight, do a doubler repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 13,500 flight cycles after doing the doubler repair, do an ETHF inspection for any cracking in the repaired area of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) Option 2: Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(3) If any crack that is greater than two inches is found in the rear spar upper cap during the inspection required by paragraph (h) of this AD, do the actions specified in paragraph (h)(3)(i) or (h)(3)(ii) of this AD.

(i) *Option 1:* Before further flight, do a splice repair of the rear spar upper cap and a doubler repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 13,500 flight cycles after doing the doubler repair, do an ETHF inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) *Option 2:* Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(i) Further Inspections if Cracking That Is Greater Than Two Inches Is Found or Is in the Rear Spar Lower Cap, Repair, and Repetitive Post-Repair Inspections

If, during any inspection required by paragraph (g) of this AD, any crack is found that is greater than two inches or is in the rear spar lower cap forward horizontal leg radius, before further flight, do an ETHF inspection for cracking on the affected wing rear spar upper cap at station Xrs = 164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(1) If no crack is found in the rear spar upper cap, before further flight, do a splice repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for any cracking of the repaired area of the lower rear spar cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If any crack that is two inches or less is found in the rear spar upper cap, do the actions specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) *Option 1:* Do the actions specified in paragraphs (i)(2)(i)(A), (i)(2)(i)(B), and (i)(2)(i)(C) of this AD.

(A) Before further flight, do a doubler repair of the rear spar upper cap and a splice repair of the rear spar lower cap, in accordance with the Accomplishment

Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(B) Within 13,500 flight cycles after doing the doubler repair required by paragraph (i)(2)(i)(A) of this AD, do an ETHF inspection for any cracking in the repaired area of the rear spar upper cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(C) Within 20,000 flight cycles after doing the splice repair required by paragraph (i)(2)(i)(A) of this AD, do an ETLF inspection and a UT inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) *Option 2:* Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(3) If any crack that is greater than two inches is found in the rear spar upper cap, before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(j) Repeat ETHF Inspection

For airplanes on which any splice repair was required by this AD: Within 30,000 flight cycles after the splice repair, repeat the inspection required by paragraph (g) of this AD for the repaired wing. If no cracking is found on the on the rear spar lower cap of the repaired wing, repeat the inspection on the affected wing rear spar lower cap thereafter at intervals not to exceed 2,550 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin MD90–57A026, dated February 11, 2010.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 13, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–17968 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0705; Airspace Docket No. 12–AWP–4

Proposed Establishment of Class E Airspace; Coaldale, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Coaldale VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC), Coaldale, NV to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Oakland Air Route Traffic Control Center (ARTCC). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before September 7, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0705; Airspace Docket No. 12–AWP–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

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 (FAA Docket No. FAA 2012–0705 and Airspace Docket No. 12–AWP–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2012–0705 and Airspace Docket No. 12–AWP–4." 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 action 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/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at Coaldale VORTAC, Coaldale, NV. This action would contain aircraft while in IFR conditions under control of the Oakland ARTCC by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would 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 U.S. Code. Subtitle 1, Section 106, describes the authority for 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at the Coaldale VORTAC, Coaldale, NV.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND 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 the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6006 En Route Domestic Airspace Areas

* * * * *

AWP NV E6 Coaldale, NV [New]

Coaldale VORTAC

(Lat. 38°00′12″ N., long. 117°46′14″ W.)

That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 38°55′20″ N., long. 119°22′42″ W.; to lat. 38°57′46″ N., long. 119°14′44″ W.; to lat. 38°41′13″ N., long. 118°53′31″ W.; to lat. 38°44′27″ N., long. 118°48′52″ W.; to lat. 38°37′03″ N., long. 118°40′45″ W.; to lat. 38°23′17″ N., long. 118°20′35″ W.; to lat. 38°16′55″ N., long. 118°13′39″ W.; to lat. 38°02′23″ N., long. 117°56′00″ W.; to lat. 37°45′08″ N., long. 117°41′19″ W.; to lat. 37°45′58″ N., long. 117°39′55″ W.; to lat. 37°29′37″ N., long. 117°25′57″ W.; to lat. 37°15′12″ N., long. 117°13′46″ W.; to lat. 37°12′00″ N., long. 117°20′00″ W.; to lat. 37°12′02″ N., long. 117°38′40″ W.; to lat. 37°19′09″ N., long. 117°58′15″ W.; to lat. 37°28′23″ N., long. 117°54′28″ W.; to lat. 37°55′00″ N., long. 118°10′30″ W.; to lat. 38°04′06″ N., long. 119°15′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on July 16, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–18072 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0569; Airspace Docket No. 12–ANM–17

Proposed Modification of Class E Airspace; Wolf Point, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Wolf Point, MT. Controlled airspace is necessary to accommodate aircraft using Nondirectional Radio Beacon (NDB) standard instrument approach procedures at L M Clayton Airport, Wolf Point, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before September 7, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0569; Airspace Docket No. 12–ANM–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

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 (FAA Docket No. FAA 2012–0569 and Airspace Docket No. 12–ANM–17) and be submitted in triplicate to the Docket Management System (see "ADDRESSES" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2012–0569 and Airspace Docket No. 12–ANM–17". 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 action 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/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the "ADDRESSES" section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace at L M Clayton Airport, Wolf Point, MT. Controlled airspace is necessary to accommodate aircraft using the NDB standard instrument approach procedures at L M Clayton Airport, and would enhance the safety and management of aircraft operations.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would 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 U.S. Code. Subtitle 1, Section 106, describes the authority for 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Wolf Point, L M Clayton Airport, Wolf Point, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND 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 the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Wolf Point, MT [Modified]

Wolf Point, L M Clayton Airport, MT
(Lat. 48°05′40″ N., long. 105°34′30″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of L M Clayton Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 48°02′00″ N., long. 104°13′00″ W.; to lat. 47°48′00″ N., long. 104°33′00″ W.; to lat. 47°48′00″ N., long. 106°00′02″ W.; to lat. 48°20′00″ N., long. 106°00′02″ W.; to lat. 48°20′00″ N., long. 104°17′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on July 16, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–18074 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket Nos. AD12–9–000 and AD11–11–000]

Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed Policy Statement.

SUMMARY: The Commission seeks comment on this proposed policy statement, which clarifies and refines current policies governing the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects. The Commission proposes to allow developers of such projects to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement on the key terms and conditions for procuring capacity, when the developers (1) broadly solicit interest in the project from potential customers, and (2) file a report with the Commission describing the solicitation, selection and negotiation process. The Commission proposes these policy reforms to ensure transparency in the capacity allocation process while providing developers the ability to bilaterally negotiate rates, terms, and conditions for the full amount of transmission capacity with potential customers.

DATES: Comments on the proposed policy statement are due on or before September 24, 2012.

FOR FURTHER INFORMATION CONTACT:

Becky Robinson, Office of Energy Policy and Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–8868, *becky.robinson@ferc.gov.*

Andrew Weinstein, Office of General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6230, *andrew.weinstein@ferc.gov.*

Brian Bak, Office of Energy Policy and Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–6574, *brian.bak@ferc.gov.*

SUPPLEMENTARY INFORMATION:

140 FERC ¶ 61,061

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

Proposed Policy Statement

Issued July 19, 2012.

I. Introduction

1. The Commission seeks comment on this proposed policy statement, which clarifies and refines current policies governing the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects. In recent years, a number of merchant and nontraditional transmission developers have sought guidance from the Commission regarding application of open access principles to new transmission facilities through petitions for declaratory orders. As the Commission addressed these requests, its policies have evolved over time to provide potential customers adequate opportunities to obtain service while also providing transmission developers adequate certainty to assist with financing transmission projects. As a result of these evolving policies, different rules have been adopted regarding capacity allocation for merchant transmission projects and nonincumbent, cost-based, participant-funded transmission projects.

2. With the benefit of experience regarding the unique characteristics of merchant and other nontraditional transmission project proposals, and in consideration of industry input on Commission policies regarding the allocation of capacity on such projects, the Commission proposes to streamline its capacity allocation policies by establishing consistent policies regarding capacity allocation for both merchant transmission projects and nonincumbent, cost-based, participant-funded transmission projects. Specifically, the Commission proposes to allow developers of such projects to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement on the key terms and conditions for procuring capacity, when they (1) broadly solicit interest in the project from potential customers, and (2) submit a report to the Commission describing the solicitation, selection and negotiation process. The Commission proposes these policy reforms to ensure transparency in the capacity allocation process while providing developers the ability to negotiate bilaterally with potential customers the rates, terms, and conditions for the full amount of transmission capacity. These policy reforms would be implemented within the existing four factor analysis used to evaluate requests for negotiated rate authority.[1] The Commission seeks comment regarding this proposed change in policy, as discussed below.

II. Background

3. The Commission first granted negotiated rate authority to a merchant transmission project developer over a decade ago, finding that merchant transmission can play a useful role in expanding competitive generation alternatives for customers.[2] Unlike

[1] *See infra* note 29.

[2] *TransEnergie U.S., Ltd.* 91 FERC ¶ 61,230, at 61,838 (2000) (*TransEnergie*).

traditional utilities recovering their costs-of-service from captive and wholesale customers, investors in merchant transmission projects assume the full market risk of development.[3] Over the course of a number of early proceedings, the Commission developed ten criteria to guide its analysis in making a determination as to whether negotiated rate authority would be just and reasonable for a given merchant transmission project.[4] Two of these criteria were that (1) an open season process should be employed to initially allocate all transmission capacity and (2) the results of the open season should be posted on an Open Access Same-Time Information System (OASIS) and filed in a report with the Commission.[5]

4. In *Chinook,* the Commission refined its approach to evaluating merchant transmission by adopting a four-factor analysis.[6] Under this analysis, the Commission continues to rely upon an open season and a post-open season report as a means to provide transparency in the allocation of initial transmission capacity and ensure against undue discrimination among potential customers in the award of transmission capacity. Specifically, the Commission evaluates the terms and conditions of the open season as part of ensuring no undue discrimination (second factor),[7] and uses the open season as an added protection in overseeing any affiliate participation, to ensure no undue preference or affiliate concerns (third factor).

5. The *Chinook* order also marked a change in Commission policy on capacity allocation, as in that order the Commission for the first time authorized developers to allocate some portion of capacity through anchor customer presubscriptions, while requiring that the remaining portion be allocated in a subsequent open season. The Commission implemented this policy to achieve the dual goals of requiring an open season process that ensures capacity on a merchant transmission project is allocated transparently in an open, fair, and not unduly discriminatory manner, while permitting an anchor customer model that enables developers of merchant transmission projects to meet the financial challenges unique to merchant transmission development.[8] Since the *Chinook* order, the Commission has issued orders on several new merchant and other nontraditional transmission development proposals, including granting requests to allocate up to 75 percent of a transmission project's capacity to anchor customers.[9]

6. The Commission also has received proposals from transmission developers regarding the allocation of capacity on cost-based, participant-funded transmission projects. These proceedings involved incumbent transmission developers,[10] while one involved a nonincumbent transmission developer.[11] In *NU/NSTAR,* the Commission approved the structure of a transaction whereby a customer was granted usage rights to transmission capacity in exchange for funding the transmission expansion, under the reasoning that any potential transmission customer has the right to request transmission service expansion from a transmission owning utility, and that utility is obligated to make any necessary system expansions and offer service at the higher of an incremental cost or an embedded cost rate to the transmission customer. More recently, in *National Grid,* the Commission found again that participant funding of transmission projects by incumbent transmission providers is not inconsistent with the Commission's open access requirements.[12] Cost-based participant-funded projects are similar to merchant projects in that both involve willing customers assuming part of the risk of a transmission project in return for defined capacity rights; i.e., there is no direct assignment of costs to captive customers. Cost-based participant-funded projects differ between incumbents and nonincumbents, in that incumbent transmission providers have a clearly defined set of existing obligations under their tariffs for the expansion of their existing transmission facilities, whereas nonincumbents have no existing obligation to build any transmission facilities.

7. To gain feedback regarding the Commission's capacity allocation policies, the Commission held a technical conference in March 2011 to discuss the extent to which nonincumbent developers of transmission should be provided flexibility in the allocation of rights to use transmission facilities developed on a cost-of-service or negotiated rate basis.[13] Participants at that conference and subsequent commenters acknowledged the value in widely soliciting new customers, but they also expressed the desire to be able to allocate 100 percent of their projects' capacity through bilateral negotiations with identified customers.[14] Based on these comments, the Commission held a follow up workshop in February 2012 to obtain input on potential reforms to the Commission's capacity allocation policies.[15] Many participants at the

[3] *Id.* at 61,836.

[4] *Id.*; *Neptune Regional Transmission System, LLC,* 96 FERC ¶ 61,147, at 61,633 (2001) (*Neptune*); *Northeast Utilities Service Co.,* 97 FERC ¶ 61,026, at 61,075 (2001) (*Northeast Utilities I*); *Northeast Utilities Service Co.,* 98 FERC ¶ 61,310. at 62,327 (2002) (*Northeast Utilities II*).

[5] The ten criteria are: (1) The merchant transmission facility must assume full market risk; (2) the service should be provided under the open access transmission tariff (OATT) of the Independent System Operator (ISO) or Regional Transmission Organization (RTO) that operates the merchant transmission facility and that operational control be given to that ISO or RTO; (3) the merchant transmission facility should create tradable firm secondary transmission rights; (4) an open season process should he employed to initially allocate transmission rights; (5) the results of the open season should be posted on the OASIS and filed in a report to the Commission; (6) affiliate concerns should be adequately addressed; (7) the merchant transmission facility not preclude access to essential facilities by competitors; (8) the merchant transmission facilities should be subject to market monitoring for market power abuse; (9) physical energy flows on merchant transmission facilities should be coordinated with, and subject to. reliability requirements of the relevant ISO or RTO; and (10) merchant transmission facilities should not impair pre-existing property rights to use the transmission grids of inter-connected RTOs or utilities. *E.g., Northeast Utilities I,* 97 FERC at 61.075.

[6] The four factors are: (1) The justness-and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements. *E.g., Chinook Power Transmission, LLC,* 126 FERC ¶ 61,134. at P 37 (2009) (*Chinook*).

[7] Also, the Commission looks to a developer's own OATT commitments or its commitment to turn operational control over to an RTO or ISO. *See id.* P 40. Guidance given in this policy statement with regards to satisfying the second factor is directed at the open season requirement; the Commission will continue to require merchant and other transmission developers either to file an OATT or to turn over control to an RTO or ISO.

[8] *See id.* P 46.

[9] *See, e.g., Champlain Hudson Power Express, Inc.,* 132 FERC ¶ 61,006 (2010); *Rock Island Clean Line LLC,* 139 FERC ¶ 61,142 (2012); *Southern Cross Transmission LLC,* 137 FERC ¶ 61,207 (2011).

[10] *See, e.g., Northeast Utilities Service Company, NSTAR Electric Company,* 127 FERC ¶ 61,179 (2009) (*NU/NStar*), *order denying reh'g. and clarification,* 129 FERC ¶ 61,279 (2009); *National Grid Transmission Services Corporation and Bangor Hydro Electric Company,* 139 FERC ¶ 61,129 (2012) (*National Grid*).

[11] *See Grasslands Renewable Energy, LLC,* 133 FERC ¶ 61,225 (2010).

[12] *National Grid,* 139 FERC ¶ 61,129 at P 29.

[13] "Priority Rights to New Participant-Funded Transmission," AD11–11–000, March 15, 2011. This technical conference also addressed generator lead lines, but those facilities are not the subject of this proposed policy statement.

[14] *See, e.g.,* Clean Line Energy Partners May 5, 2011 Comments at 7 (Clean Line); LS Power Transmission, LLC May 5, 2011 Comments at 3–4 (LSPT); Transmission Developers, Inc., May 5, 2011 Comments at 4–5 (TDI); Western Independent Transmission Group May 5, 2011 Comments at 6 (WITG); and Tonbridge Power Inc. April 19, 2011 Comments at 2 (Tonbridge).

[15] "Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based,

Continued

2012 workshop suggested that the need for flexibility required something less structured than the traditional open season process. Specifically, some commenters, including transmission developers, emphasized the inherent incentive transmission developers have to solicit interest widely and attract potential customers to their project, so that they can identify customers that are most likely to be successful in their own generation projects and therefore provide the greatest certainty that they will be successful in becoming transmission customers.[16] In this respect, these commenters argued that their incentives harmonize with the Commission's goals of open access. Further, they argue that their class of transmission developers does not raise the same concerns that motivated the Commission in Order No. 888,[17] where vertically-integrated utilities had an economic incentive to favor their own generation and discriminate against competitors when providing transmission service.[18]

8. However, commenters also focused on the need for negotiation flexibility during the capacity allocation process,[19] pointing out that the transmission developer and customer need to address a variety of issues, including points of delivery and receipt, project timing and what happens if schedules change, termination rights of parties at various development stages, development cost-sharing, length and payments of the initial term of service, extensions of the term and associated payments.[20] These commenters argued that a rigid open season process that requires developers to offer all customers the same terms and conditions does not allow for the bilateral exchange of information to address the unique needs of developers and their potential customers. Moreover, these commenters pointed out that there have been no claims of undue discrimination resulting from any of the anchor customer proposals the Commission has approved, to date,[21] and that parties who feel they were unduly discriminated against have had, as an added protection, the right to file a section 206 complaint.[22]

9. However, other commenters at the 2012 workshop voiced concerns with the merchant transmission model in general, and the opportunity for potentially unduly discriminatory deals.[23] They argued that allowing more flexibility for merchant transmission developers is tantamount to reverting to the pre-open access Order No. 888 days of transmission regulation, and discouraged the Commission from pursuing policies that enable anchor customers to exclude or burden generation competitors or engage in other abusive practices the Commission sought to eradicate in Order No. 888. Such commenters favor requiring merchant transmission developer participation in the regional planning process.[24] The staff of the Federal Trade Commission similarly questions how the Commission will restrain merchant transmission developers from exercising market power.[25]

10. The Commission believes that there is a role within its transmission development policies for both bilateral negotiations for transmission service and uniform rules and processes through the *pro forma* OATT for all customers at all times. The policy of open access and comparable treatment is the underpinning of the Commission's approach to ensuring against undue discrimination and permeates many, if not all, of the Commission's programs. However, this does not mean that the Commission cannot be flexible in how it accomplishes open access and comparable treatment. As Order No. 1000[26] is implemented around the country, the Commission expects that more transmission needs will be identified and addressed through the open and transparent regional transmission planning process. Nonetheless, bilateral negotiation between transmission developers and potential customers may be another appropriate vehicle for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects to move forward. In fact, Order No. 1000 allowed for such a vehicle, noting that some projects may not seek to pursue regional or interregional cost allocation.[27] In addition, there may be projects that are considered in the regional planning process that, although not ultimately selected in a regional plan for purposes of cost allocation, have sufficient value for individual potential customers such that they wish to pursue them through bilateral negotiations with a potential developer. This proposed policy statement is intended to provide a "roadmap" for entities to pursue those projects, while also serving to ensure transparency in the allocations of capacity resulting from such bilateral negotiation and, in turn, to ensure that transmission service is provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory.

11. Accordingly, the Commission proposes to clarify and refine its policies governing the allocation capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects to ensure that it is done in an open and transparent manner, giving all interested parties a chance to participate. The Commission believes that the proposed capacity allocation process outlined here satisfies our statutory responsibilities, provides sufficient transparency and protections to market participants, and is responsive to the industry concerns.

Participant-Funded Transmission Projects," Docket No. AD12–9–000 (February 28, 2012).

[16] *See, e.g.*, MATL LLP and Montana Alberta Tie, Ltd. March 29, 2012 Comments at 3 (MATL).

[17] *Promoting Wholesole Competition Through Open Access Non-Discriminotory Transmission Services by Public Utilities; Recovery of Stronded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *off'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (DC Cir. 2000), *off'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[18] SunZia Transmission, LLC March 29, 2012 Comments at 7 (SunZia).

[19] *See, e.g.*, WITG March 28, 2012 Comments at 5; Clean Line March 28, 2012 Comments at 5–7; SunZia March 29, 2012 Comments at 3–6, 9; LSPT March 29, 2012 Comments at 2–4; and Pattern Transmission March 28, 2012 Comments at 6–7 (Pattern).

[20] LSPT March 29, 2012 Comments at 2–3.

[21] TransWest Express LLC March 28, 2012 Comments at 7.

[22] Duke Energy Corporation March 29, 2012 Comments at 7–8; 16 U.S.C. 824e (2006).

[23] *See, e.g.*, Transmission Access Policy Study Group March 29, 2012 Comments at 6–9 (TAPS); Transmission Dependent Utility Systems March 29, 2012 Comments at 2–4; New Jersey Division of Rate Counsel March 29, 2012 Comments at 2–4; and the Federal Trade Commission staff June 14, 2012 Comments at 6–9 (FTC staff).

[24] This latter argument is outside the scope of this proceeding and was addressed in Order No. 1000–A. Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000–A, 139 FERC ¶ 61,132, at P 297 (2012).

[25] FTC staff June 14, 2012 Comments at 9.

[26] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000–A, 139 FERC ¶ 61,132 (2012).

[27] *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 725; Order No. 1000–A, 139 FERC ¶ 61,132 at PP 728–729 ("[N]othing in Order No. 1000 forecloses the opportunity for a transmission developer, a group of transmission developers, or one or more individual transmission customers to voluntarily assume the costs of a new transmission facility * * *. Transmission developers who see particular advantages in participant funding remain free to use it on their own or jointly with others. This simply means they would not be pursuing regional or interregional cost allocation.").

III. Discussion

A. Merchant Transmission Projects

12. The Commission proposes to revise its merchant transmission policy to streamline the process by which capacity may be allocated on new merchant transmission projects and to expect more detail and transparency in the report describing the developer's capacity allocation approach. While the Commission's fundamental concerns continue to be that new transmission capacity be allocated in a not unduly discriminatory or preferential manner, the Commission's experience with new merchant transmission projects and comments received during the technical conference and workshop suggest that we can provide more flexibility while addressing these concerns. The Commission proposes to allow merchant transmission developers to allocate up to 100 percent of their projects' capacity through bilateral negotiations.[28] With the transparency protections discussed below, the Commission also proposes to allow capacity allocation to affiliates, when done in a transparent manner, so that other interested parties can voice concern if they believe the affiliate was treated preferentially at the expense of another party.[29]

13. The flexibility we propose to afford under the policy outlined below is complemented by the emphasis on additional detail in reports describing the developer's capacity allocation approach. The Commission agrees with commenters that each merchant transmission project has unique characteristics that require the ability to negotiate risk-sharing and other details. The Commission also acknowledges that merchant transmission developers have inherent incentives to solicit interest widely in a potential project. However, other commenters point out that counter-incentives may exist that motivate a developer to unduly prefer one or more customers. To protect against undue discrimination, the Commission proposes to allow merchant transmission developers to engage in an open solicitation to identify potential transmission customers, but with the expectation that they will submit to the Commission reports regarding the processes that led to the identification of customers and execution of relevant capacity arrangements. The Commission believes that this approach, when coupled with the existing opportunity to file complaints under FPA section 206, serves the interest of customers and developers alike.[30]

1. Open Solicitation Process

14. In the past, the Commission has required an open season for the allocation of capacity on new merchant transmission projects. The open season requirement was to ensure open access to transmission capacity and prevent the withholding of transmission capacity from interested transmission customers, and also to enable the developer to assess the size of the market. However, beginning with the *Chinook* order, the Commission also began to allow the allocation of a portion of transmission capacity through bilateral negotiations prior to an open season. Thus, current Commission policy allows a merchant transmission developer to solicit interest through bilateral negotiations for a portion of its capacity so long as it makes the remainder available through an open season.

15. Based on the Commission's experience with prior cases and information received from the technical conference and workshop, the Commission believes that bilateral negotiations, if conducted in a transparent manner, may serve the same purpose as an open season process by ensuring against undue discrimination or preference in the provision of transmission service. Hence, the Commission proposes that, in seeking negotiated rate authority, merchant transmission developers should also engage in an open solicitation of interest in their projects from potential transmission customers (without the previous requirement of an open season). Such open solicitation should include a broad notice issued in a manner that ensures that all potential and interested customers are informed of the proposed project. For example, such notice may be placed in trade magazines, regional energy publications, communications with regional transmission planning groups, and email distribution lists addressing transmission-related matters. Such notice should include transmission developer points of contact and pertinent project dates, as well as sufficient technical specifications and contract information to inform interested customers of the nature of the project, including:

Technical specifications
- Project size/Capacity: MW and/or kV rating (specific value or range of values)
- End points of line (as specific as possible such as points of interconnection to existing lines and substations, although it may be potentially broad, such as Montana to Nevada, if the project is very early in development)
- Projected construction and/or in-service dates
- Type of line—for example, AC, DC, bi-directional

Contract information
- Precedent agreement (if developed)
- Other capacity allocation arrangements (including how it will address potential oversubscription of capacity)

16. The developer should also specify in the notice the criteria it plans to use to select transmission customers, such as credit rating; "first mover" status, i.e., customers who respond early and take on greater project risk; and customers' willingness to incorporate project risk-sharing into their contracts. This will contribute to the transparency of the process, and help interested entities know at the outset the features of the project and how the bids to the merchant transmission developer will be considered.

17. Finally, the merchant transmission developer would be expected to update its posting if there are any material changes to the nature of the project or the status of capacity allocation.

18. Under this proposed process, once a subset of customers has been identified by the developer through the open solicitation process, the Commission would allow developers to engage in bilateral negotiations with each potential customer on the specific terms and conditions for procuring transmission capacity, as the Commission recognizes that developers and potential customers may need to negotiate individualized terms that meet their unique needs.[31] In these

[28] Commenters in the technical conference and in the workshop specifically requested that the Commission clarify circumstances under which merchant transmission developers would be allowed to allocate up to 100 percent of their project's capacity through bilateral negotiations.

[29] By proposing to adopt the policies herein, the Commission seeks to encourage merchant transmission developers intending to seek negotiated rate authority to utilize the guidelines discussed below. To the extent that a merchant transmission developer substantially complies with any such policies ultimately adopted by the Commission, the developer would be deemed to have satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.

[30] *See Chinook*, 126 FERC ¶ 61,134 at P 41.

[31] While negotiations for the allocation of initial transmission rights may address terms and conditions of the transmission service to be ultimately taken once the facilities are in service, the Commission will adhere to its policy, regardless of any negotiated agreement, that any deviations from the Commission's *pro forma* OATT must be justified as consistent with or superior to the *pro forma* OATT when the transmission developer files its OATT with the Commission and any deviations will be evaluated on that basis by the Commission when they are submitted. *See Chinook*, 126 FERC ¶ 61,134 at PP 47, 63.

negotiations, the Commission proposes to allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria—so long as the differences in negotiated terms recognize material differences and do not result in undue discrimination or preference —with the potential result that a single customer may be awarded up to 100 percent of capacity. For instance, developers might offer "first mover" customers more favorable terms and conditions than later customers.

2. Reporting

19. In the past, the Commission required that developers file a report, shortly after the close of the open season, on the results of the open season and any anchor customer presubscription, including information on the notice of the open season, the method used for evaluating bids, the identity of the parties that purchased capacity, and the amount, term, and price of that capacity.[32] The Commission required this report to provide transparency to the allocation of initial transmission rights, and to enable unsuccessful bidders to determine if they were treated in an unduly discriminatory manner so that they may file a complaint if they believe they were.[33]

20. The Commission now proposes to place more emphasis on reporting, as the success of the capacity allocation approach proposed here and its ability to prevent undue discrimination relies, to a noticeable degree, on the transparency this report provides. Open access requires not only that everyone is given an opportunity to seek access, but also that entities know how their bids were evaluated and, if they were not selected in the initial allocation of transmission rights, on what basis that decision was made. If a party feels it was treated in an unduly discriminatory way, it may file a complaint under section 206 of the FPA; however, parties must have access to the relevant information on the outcomes of the capacity allocation process to evaluate whether or not they were treated fairly.

21. To prevent against undue discrimination by merchant transmission developers, a report should be submitted shortly after the completion of the open solicitation process and the resulting negotiations describing the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements. The merchant transmission developer should describe the criteria used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not. The Commission proposes that the developer should include, at a minimum, the following information in the report to provide sufficient transparency to the Commission and interested parties:

(1) Steps the developer took to provide broad notice;

(2) Identity of the parties that purchased capacity, and the amount, term, and price of that capacity;

(3) Basis for the developer's decision to prorate, or not to prorate, capacity, if a proposed project is oversubscribed;

(4) Basis for the developer's decision not to increase capacity for a proposed project if it is oversubscribed (including the details of any relevant technical or financial bases for declining to increase capacity);

(5) Justification for offering more favorable terms to certain customers, such as "first movers" or those willing to take on greater project risk-sharing;

(6) Criteria used for distinguishing customers and the method used for evaluating bids. This should include specific details on how each potential transmission customer (including both those who were and those who were not allocated capacity) was evaluated and compared to other potential transmission customers, both at the early stage when the developer chooses with whom to enter into bilateral negotiations and subsequently when the developer chooses in the negotiation phase to whom to award transmission capacity;

(7) Explanation of decisions used to select and reject specific customers. In particular, the report should identify the facts, including any terms and conditions of agreements unique to individual customers that led to their selection, and relevant information about others that led to their rejection. If a selected customer is an affiliate, the Commission will look more carefully at the basis for reaching that determination.

22. The Commission anticipates that, under this proposed policy, those developers requesting negotiated rate authority will file this report either in conjunction with their request for negotiated rate authority or as a compliance filing to a Commission order approving a request for negotiated rate authority.[34] This will allow interested entities to submit comments on the report, or otherwise protest the contents or insufficiency of the report, to ensure that there is sufficient transparency, as well as to provide Commission oversight in the capacity allocation process.[35]

23. Beyond the reporting process described above, the Commission does not propose to change its existing requirement that developers seek Commission approval, either when the developer requests negotiated rate authority or files its report describing its capacity allocation approach, if an affiliate is expected to participate as a customer on the proposed merchant transmission project. Further, consistent with Commission precedent, in order to allow affiliate participation, the Commission will expect an affirmative showing that the affiliate is not afforded an undue preference.[36]

B. Nonincumbent, Cost-Based, Participant-Funded Projects

24. The Commission proposes to apply the policy reforms above to nonincumbent, cost-based, participant-funded transmission developers. The Commission has similar concerns regarding the capacity allocation process regardless of whether the project is a nonincumbent, cost-based, participant-funded transmission project or a merchant transmission project. That is, the Commission is concerned that access is not unduly discriminatory or preferential. We believe that the process outlined herein will address our concerns regardless of the manner by which transmission rates are determined. Commenters and workshop participants support the Commission's

[32] *Chinook*, 126 FERC ¶ 61,134 at PP 41, 43.

[33] *See Chinook*, 126 FERC ¶ 61,134 at P 41; *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at P 37 (2006).

[34] This flexibility in timing acknowledges that parties have filed and may continue to file requests for negotiated rate authority at various stages of their project development process.

[35] Commenters opposing the Commission's merchant transmission policy generally express concern regarding the use and allocation of scarce rights-of-way. The Commission appreciates the significance of this issue, but has limited authority to address it directly. Through Order Nos. 890 and 1000, the Commission has increased transparency in local and regional transmission planning processes, and through this proposed policy statement seeks to increase transparency in the negotiation of capacity allocation with merchant transmission and nonincumbent, cost-based, participant-funded developers. For example, as noted above, the pre-open solicitation notice requirement and post-open solicitation reporting requirement proposed here require developers to provide information on any oversubscription of a proposed project. The Commission anticipates that this kind of information may be useful for relevant entities (such as siting authorities) as they evaluate whether a proposed transmission facility satisfies applicable requirements for use and allocation of rights-of-way.

[36] *See Chinook*, 126 FERC ¶ 61,134 at PP 49–50.

application of these policy reforms to both merchant transmission developers and nonincumbent, cost-based, participant-funded transmission developers.[37]

25. However, use of this common process does not eliminate the distinction between these types of projects. In particular, although the negotiations between developers and potential customers could address a transmission rate, among other issues, the Commission's approach to reviewing such a rate would be different for a new merchant transmission project than for a new nonincumbent, cost-based, participant-funded transmission project. For a merchant transmission project, the Commission relies on the processes it sets forth to ensure against undue discrimination in the award of capacity and the willingness of the transmission developer and customers to negotiate a transmission rate and terms and conditions, understanding that the customers are not captive customers.[38] For a nonincumbent, cost-based, participant-funded transmission project, the Commission would review the transmission rate, including any agreed upon return on equity, in greater detail to ensure that it satisfies Commission precedent regarding cost-based transmission service.

26. While we are proposing that this capacity allocation process apply equally to nonincumbent, cost-based, participant-funded projects, we are not proposing to evaluate such projects based on the other aspects of the four factor analysis set forth in *Chinook*.[39] To the extent nonincumbent, cost-based, participant-funded transmission projects wish to use an anchor customer-type model, the effect of the proposed policy would be that the Commission will deem any capacity allocation process that follows the guidelines of this proposed policy statement to satisfy its concerns regarding undue discrimination and undue preference.

C. Incumbent, Cost-Based, Participant-Funded Projects

27. The Commission does not propose to change its case-by-case evaluation of requests for cost-based participant-funded transmission projects by incumbent transmission providers.[40] As noted above, incumbents differ from nonincumbents in that the former have a clearly defined set of existing obligations under their OATTs with regard to new transmission development, including participation in regional planning processes and the processing of transmission service request queues. Nonincumbent transmission developers do not yet own or operate transmission facilities in the region that they propose to develop transmission and, therefore, are not yet subject to an OATT in that region. The proposed policy laid out above identifies the Commission's policies regarding the allocation of capacity for merchant transmission developers and nonincumbent, cost-based, participant-funded projects during the development of a new transmission facility. In most instances, we would expect that an incumbent transmission provider will be able to use existing processes set forth in its OATT to allocate capacity on a new transmission facility. These existing OATT processes do not prohibit incumbent transmission owners from identifying projects that could be constructed on a participant-funded basis in conjunction with processing of transmission service requests or in addition to meeting transmission needs through participation in a regional transmission planning process.[41] Furthermore, the Commission will continue to entertain on a case-by-case basis requests for waiver of any OATT requirements that may be needed for the incumbent transmission owner to pursue innovative transmission development that is just, reasonable, and not unduly discriminatory. For example, an incumbent may seek waiver of serial queue processing requirements so that they may cluster transmission service requests,[42] or they may seek to "ring fence" a transmission project in order to ensure that new transmission facilities developed for a particular customer or set of customers do not adversely impact existing customers, including native load.[43] Incumbent developers should address the capacity allocation issues in a manner that does not constitute undue discrimination or preference and is consistent with the applicable Commission-accepted tariffs.[44]

IV. Comment Procedures

28. The Commission invites comments on this proposed policy statement September 24, 2012.

V. Document Availability

29. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

30. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

31. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18012 Filed 7–23–12; 8:45 am]

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[37] TAPS March 29, 2012 Comments at 24; Pathfinder Renewable Wind Energy, LLC March 28, 2012 Comments at 3–4.

[38] *TransEnergie*, 91 FERC ¶ 61,230 at 61,836.

[39] We note, however, that petitions regarding capacity allocation on nonincumbent, cost-based, participant-funded transmission projects must continue to be evaluated by the Commission in accordance with the Commissions' responsibilities under the FPA.

[40] *See, e.g., NU/NSTAR; National Grid.*

[41] *See, e.g., Subscription Process for Proposed PacifiCorp Transmission Expansion Projects, available at http://www.oasis.pacificorp.com/oasis/ppw/SUBSCRIPTION_PROCESS.PDF* (noting incumbent's solicitation of interest from third parties in the development of a cost-based transmission project in advance of receipt of transmission service requests from third parties under the incumbent's OATT).

[42] *See, e.g., Portland General Electric Co.*, 139 FERC ¶ 61,133 (2012) (granting waiver of serial queue processing requirements, allowing a general facilities study for a cluster of transmission and interconnection service requests).

[43] *See, e.g., Mountain States Transmission Intertie, LLC and NorthWestern Corp.*, 127 FERC ¶ 61,270, at PP 2, 5 (2009) (incumbent developing an export-only transmission project through a separate stand-alone company so that their existing transmission customers will not be required to subsidize the cost of a new transmission facility to serve off-system markets; the Commission presented the option of this project proceeding on a cost-of-service basis).

[44] *See National Grid*, 139 FERC ¶ 61,129 at P 33.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM12–9–000]

Regional Reliability Standard PRC–006–SERC–01—Automatic Underfrequency Load Shedding Requirements

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve regional Reliability Standard PRC–006–SERC–01 (Automatic Underfrequency Load Shedding Requirements) submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). Regional Reliability Standard, PRC–006–SERC–01, is designed to ensure that automatic underfrequency load shedding protection schemes designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Reliability Corporation (SERC) Region are coordinated to effectively mitigate the consequences of an underfrequency event. The Commission also proposes to approve the related violation risk factors, with one modification, and violation severity levels, implementation plan, and effective date proposed by NERC.

DATES: Comments are due September 24, 2012.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Morris (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6803, *Susan.Morris@ferc.gov*.

Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8408, *Matthew.Vlissides@ferc.gov*.

SUPPLEMENTARY INFORMATION:

140 FERC ¶ 61,056

Notice of Proposed Rulemaking

(Issued July 19, 2012)

1. Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve regional Reliability Standard PRC–006–SERC–01 (Automatic Underfrequency Load Shedding (UFLS) Requirements) in the SERC Reliability Corporation (SERC) [1] Region. The Commission also proposes to approve the related violation risk factors (VRFs), with one modification, and violation severity levels (VSLs), implementation plan, and effective date proposed by the North American Electric Reliability Corporation (NERC). Regional Reliability Standard PRC–006–SERC–01 was submitted to the Commission for approval by NERC and is designed to ensure that automatic UFLS protection schemes designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region are coordinated to effectively mitigate the consequences of an underfrequency event.

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[2]

3. Reliability Standards that NERC proposes to the Commission may include Reliability Standards that are proposed by a Regional Entity to be effective in that region.[3] In Order No. 672, the Commission noted that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.

When NERC reviews a regional Reliability Standard that would be applicable on an interconnection-wide basis and that has been proposed by a Regional Entity organized on an interconnection-wide basis, NERC must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[4] In turn, the Commission must give "due weight" to the technical expertise of NERC and of a Regional Entity organized on an interconnection-wide basis.[5]

4. On April 19, 2007, the Commission accepted delegation agreements between NERC and each of the eight Regional Entities.[6] In the order, the Commission accepted SERC as a Regional Entity organized on less than an interconnection-wide basis. As a Regional Entity, SERC oversees Bulk-Power System reliability within the SERC Region, which covers a geographic area of approximately 560,000 square miles in a sixteen-state area in the southeastern and central United States (all of Missouri, Alabama, Tennessee, North Carolina, South Carolina, Georgia, Mississippi, and portions of Iowa, Illinois, Kentucky, Virginia, Oklahoma, Arkansas, Louisiana, Texas and Florida). The SERC Region is currently geographically divided into five subregions that are identified as Southeastern, Central, VACAR, Delta, and Gateway.

B. Proposed Regional Reliability Standard PRC–006–SERC–01

5. On February 1, 2012, NERC submitted a petition to the Commission seeking approval of regional Reliability

[1] SERC amended its Articles of Incorporation on May 9, 2006 to change its name from Southeastern Electric Reliability Council to SERC Reliability Corporation. *Available at http://serc1.org/Documents/Regional%20Entity%20Documents1/Regional %20Entity%20Documents%20(All)/Name%20Change%205-17-06%20SFX4C5F.pdf.*

[2] *See* 16 U.S.C. 824o(e) (2006).

[3] 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. *See* 16 U.S.C. 824o(a)(7) and (e)(4).

[4] 16 U.S.C. 824o(d)(3).

[5] *Id.* § 824o(d)(2).

[6] *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007).

Standard PRC–006–SERC–01.[7] NERC requests approval of the regional Reliability Standard, associated VRFs and VSLs, and the implementation plan for PRC–006–SERC–01. NERC requests the standard become effective over a 30-month window following the effective date of a final rule in this docket, as provided in NERC's implementation plan, to allow entities to respond to any changes in UFLS settings. NERC states that this is the first request for Commission approval of this proposed regional Reliability Standard and that it will only apply to applicable registered entities within the SERC Region. NERC also states that the NERC continent-wide Reliability Standards do not presently address the issues covered in regional Reliability Standard PRC–006–SERC–01.

6. NERC states that regional Reliability Standard PRC–006–SERC–01 was developed to be consistent with the NERC UFLS Reliability Standard PRC–006–1.[8] Regional Reliability Standard PRC–006–SERC–01 is designed to ensure that automatic UFLS protection schemes designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region are coordinated to effectively mitigate the consequences of an underfrequency event.[9]

7. NERC states that the proposed regional Reliability Standard satisfies the factors set forth in Order No. 672 that the Commission considers when determining whether a proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[10] NERC states that regional Reliability Standard PRC–006–SERC–01 adds specificity not contained in the NERC UFLS Reliability Standard for UFLS schemes in the SERC Region.[11] NERC states that regional Reliability Standard PRC–006–SERC–01 effectively mitigates, in conjunction with Reliability Standard PRC–006–1, the consequences of an underfrequency event while accommodating differences in system transmission and distribution topology among SERC planning coordinators resulting from historical design criteria, makeup of load demands, and generation resources.[12]

8. According to NERC, regional Reliability Standard PRC–006–SERC–01 is clear and unambiguous regarding what is required and who is required to comply. The proposed regional Reliability Standard is applicable to generator owners, planning coordinators, and UFLS entities in the SERC Region. The term "UFLS entities" (as noted in Reliability Standard PRC–006–1) means all entities that are responsible for the ownership, operation, or control of automatic UFLS equipment as required by the UFLS program established by the Planning Coordinators.[13] NERC states that such entities may include distribution providers and transmission owners. NERC also states that each requirement of PRC–006–SERC–01 has an associated measure of compliance that will assist those enforcing the standard to enforce it in a consistent and non-preferential manner.Proposed regional Reliability Standard PRC–006–SERC–01 contains eight requirements, summarized as follows:

Requirement R1 requires each planning coordinator to include its SERC subregion as an identified island when developing criteria for selecting portions of the Bulk-Power System that may form islands;

Requirement R2 requires each planning coordinator to select or develop an automatic UFLS scheme (percent of load to be shed, frequency set points, and time delays) for implementation by UFLS entities within its area that meets the specified minimum requirements;

Requirement R3 requires each planning coordinator to conduct simulations of its UFLS scheme for an imbalance between load and generation of 13 percent, 22 percent, and 25 percent for all identified islands;

Requirement R4 requires each UFLS entity that has a total load of 100 MW or greater in a planning coordinator area in the SERC Region to implement the UFLS scheme developed by their planning coordinator within specified tolerances;

Requirement R5 requires each UFLS entity that has a total load less than 100 MW in a planning coordinator area in the SERC Region to implement the UFLS scheme developed by their planning coordinator within specified tolerances, but specifies that those entities shall not be required to have more than one UFLS step;

Requirement R6 requires each UFLS entity in the SERC Region to implement changes to the UFLS scheme which involve frequency settings, relay time delays, or changes to the percentage of load in the scheme within 18 months of notification by the planning coordinator;

Requirement R7 requires each planning coordinator to provide specified information concerning their UFLS scheme to SERC according to the schedule specified by SERC; and

Requirement R8 requires each generator owner to provide specified generator underfrequency and overfrequency protection information within 30 days of a request by SERC to facilitate post-event analysis of frequency disturbances.

9. NERC also explains that the proposed regional Reliability Standard sets minimum automatic UFLS design requirements, which are equivalent to the design requirements in the SERC UFLS program that has been in effect since September 3, 1999.[14] NERC states that the one change relative to the existing SERC UFLS program is the addition of a minimum time delay requirement. The addition allows planning coordinators to use current UFLS schemes if those schemes meet the performance requirements specified in the NERC UFLS standard. Therefore, NERC concludes that the distribution providers and transmission owners subject to the proposed regional Reliability Standard will have to make minimal changes to implement their portions of the UFLS schemes.

10. NERC also proposes VRFs and VSLs for the regional Reliability Standard, an implementation plan, and an effective date. NERC states that these aspects were developed and reviewed for consistency with NERC and Commission guidelines.

11. NERC proposes specific implementation plans for each requirement in the regional Reliability Standard, as identified below, with the regional Reliability Standard becoming fully effective thirty months after the first day of the first quarter following regulatory approval. NERC states that the implementation time is reasonable, as it balances the need for reliability

[7] North American Electric Reliability Corp., February 1, 2012 Petition for Approval of Regional Reliability Standard PRC–006–SERC–01 (NERC Petition). The proposed new Regional Reliability Standard is not codified in the CFR. However, it is available on the Commission's eLibrary document retrieval system in Docket No. RM12–9–000 and is available on the NERC's Web site, *www.nerc.com*.

[8] *See Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Order No. 763, 139 FERC ¶ 61,098 (May 7, 2012) (approving Reliability Standards PRC–006–1 (Automatic Underfrequency Load Shedding) and EOP–003–2 (Load Shedding Plans)).

[9] NERC Petition at 7.

[10] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at PP 323–337 (2006), *order on reh'g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[11] NERC Petition at 18.

[12] *Id.* at 18–19.

[13] NERC Petition at 7 (*citing* NERC Reliability Standard PRC–006–1, *available at http://www.nerc.com/files/PRC-006-1.pdf*).

[14] NERC Petition at 12.

with the practicability of implementation.

12. NERC proposes that Requirement R1 of PRC–006–SERC–01 become effective twelve months after the first day of the first quarter following regulatory approval, but no sooner than twelve months following regulatory approval of Reliability Standard PRC–006–1. NERC states that this twelve-month period is consistent with the effective date of Requirement R2 of Reliability Standard PRC–006–1. Requirement R2 of PRC–006–SERC–01 would become effective twelve months after the first day of the first quarter following regulatory approval. NERC states that this twelve-month period is needed to allow time for entities to ensure a minimum time delay of six cycles on existing automatic UFLS relays as specified in Sub-requirement R2.6. Requirement R3 would become effective eighteen months after the first day of the first quarter following regulatory approval. NERC explains that this additional six-month period is needed to allow time to perform and coordinate studies necessary to assess the overall effectiveness of the UFLS schemes in the SERC Region. Requirements R4, R5, and R6 would become effective thirty months after the first day of the first quarter following regulatory approval. NERC states that this additional eighteen months is needed to allow time for any necessary changes to be made to the existing UFLS schemes in the SERC Region. Requirement R7 would become effective six months following the effective date of Requirement R8 of Reliability Standard PRC–006–1, but no sooner than one year following the first day of the first calendar quarter after applicable regulatory approval of PRC–006–SERC–01. Finally, Requirement R8 of PRC–006–SERC–01 would become effective twelve months after the first day of the first quarter following regulatory approval. NERC states that this twelve-month period is needed to allow time for generator owners to collect and make an initial data filing.

II. Discussion

A. PRC–006–SERC–01

13. Pursuant to FPA section 215(d)(2), we propose to approve regional Reliability Standard PRC–006–SERC–01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. PRC–006–SERC–01 is designed to work in conjunction with NERC Standard PRC–006–1 to effectively mitigate the consequences of an underfrequency event while accommodating differences in system transmission and distribution topology among SERC Planning Coordinators due to historical design criteria, makeup of load demands, and generation resources.[15] As indicated above, PRC–006–SERC–01 covers topics not covered by the corresponding NERC Reliability Standard PRC–006–1 because it adds specificity for UFLS schemes in the SERC Region. For example, Requirement R1 of the proposed regional Reliability Standard PRC–006–SERC–01 requires all planning coordinators in the SERC Region to include their respective "SERC subregion as an identified island when developing criteria for selecting portions of the [Bulk-Power System] that may form islands." [16] This requirement goes beyond the corresponding requirement in Reliability Standard PRC–006–1 that a planning coordinator study the entire region as an island.

14. While we propose to approve regional Reliability Standard PRC–006–SERC–01, we identify a possible inconsistency between Requirement R6 of the proposed regional Reliability Standard and PRC–006–1, which the Commission addressed in Order No. 763. Reliability Standard PRC–SERC–006–01, Requirement R6 states:

> R6. Each UFLS entity shall implement changes to the UFLS scheme which involve frequency settings, relay time delays, or changes to the percentage of load in the scheme within 18 months of notification by the Planning Coordinator. *[Violation Risk Factor: Medium][Time Horizon: Long-term Planning]*

The rationale for Requirement R6 included in the NERC petition is the following:

> Rationale for R6: The SDT believes it is necessary to put a requirement on how quickly changes to the scheme should be made. This requirement specifies that changes must be made within 18 months of notification by the PC. The 18 month interval was chosen to give a reasonable amount of time for making changes in the field. All of the SERC region has existing UFLS schemes which, based on periodic simulations, have provided reliable protection for years. Events which result in islanding and an activation of the UFLS schemes are extremely rare. Therefore, the SDT does not believe that changes to an existing UFLS scheme will be needed in less than 18 months. *However, if a PC desires that changes to the UFLS scheme be made faster than that, then the PC may request the implementation to be done sooner than 18 months. The UFLS entity may oblige but will not be required to do so.*[17]

15. The Commission reads the requirement that UFLS entities implement a change "within 18-months" to establish a "maximum" timeframe to comply with a planning coordinator's schedule to implement changes to UFLS schemes, but also to recognize that the planning coordinator could establish a schedule for the changes to be implemented in less time.[18] The inclusion of a maximum timeframe would be more stringent than Reliability Standard PRC–006–1, Requirement R9, which does not contain a maximum timeframe to implement changes to a UFLS scheme.

16. We are concerned, however, that the italicized language in the rationale NERC provides for Requirement R6 may be incompatible with Order No. 763. As explained above, we interpret Requirement R6 to mean that planning coordinators can establish schedules for requiring changes to UFLS schemes by applicable entities within an 18-month time frame from the time the entities are notified. Yet, the rationale for Requirement R6 could result in Requirement R6 being read to allow applicable entities not to adopt the planning coordinator's schedule if it is less than 18 months. The Commission is concerned that leaving it up to applicable entities to determine their schedules for changes under certain circumstances will cause confusion and result in a lack of consistency in the application of the regional Reliability Standard. Allowing each UFLS entity to choose its own timing could harm reliability or at least defeat the purpose of the planning coordinator's role.

17. Our concern is rooted in the Commission's directive in Order No. 763 concerning PRC–006–1, which held that planning coordinators should be responsible for establishing schedules for the completion of corrective actions in response to UFLS events.[19] In the Notice of Proposed Rulemaking for PRC–006–1, the Commission stated that Reliability Standard PRC–006–1 does not specify how soon after an event an entity would need to implement corrections in response to any deficiencies identified in an event assessment.[20] NERC responded that the time that a UFLS entity has to

[15] NERC Petition at 18.

[16] NERC Petition, Exhibit C at 6.

[17] NERC Petition, Exhibit A at 14 (emphasis added).

[18] In the VSL and VRF analysis in Exhibit E of NERC's Petition, NERC states that Requirement R6 specifies the maximum time for a UFLS entity to complete implementation of a major change in a planning coordinator's UFLS scheme. *See* NERC Petition, Exhibit E at 16 ("[Requirement R6] specifies the maximum time for a UFLS entity to complete implementation of a major change in a Planning Coordinator's UFLS scheme.").

[19] Order No. 763, 139 FERC ¶ 61,098 at P 48.

[20] *Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Notice of Proposed Rulemaking, 76 FR 66,220 (October 26, 2011), FERC Stats. & Regs. ¶ 32,682 (2011).

implement corrections will be established by the planning coordinator, as specified in Requirement R9 of PRC–006–1.[21] In Order No. 763, the Commission accepted NERC's comments that Requirement R9 requires compliance with a schedule established by the planning coordinator, but the Commission stated that NERC's reading of Requirement R9 should be made clear in the Requirement itself and directed NERC to make that requirement explicit in future versions of the Reliability Standard.[22]

18. NERC states that PRC–006–SERC–01 is designed to work in conjunction with Reliability Standard PRC–006–1.[23] NERC also maintains that the regional Reliability Standard is more stringent than PRC–006–1.[24] Construing Requirement R6 as imposing a maximum time to comply with a planning coordinator's schedule, but leaving it up to the applicable entity to decide whether to take more time (up to 18 months) than the planning coordinator schedule allows, would be inconsistent with and, in certain cases, be less stringent than PRC–006–1. First, we are concerned that allowing applicable entities the flexibility to determine their own implementation schedule (up to 18 months) for changes rather than follow the schedule established by the planning coordinator is inconsistent with the policy underlying Order No. 763 that planning coordinators establish schedules for completing changes to UFLS programs. If a planning coordinator believes that a change made pursuant to Requirement R6 should be completed in less than 18 months, the planning coordinator's schedule should be mandatory. Second, in certain circumstances, such an interpretation would be expressly prohibited by the Commission's directive in Order No. 763 concerning Requirement R9, which gives the planning coordinator the responsibility of setting a schedule for completing corrective actions to UFLS programs following event assessments pursuant to Requirement R11 and R12 of PRC–006–1. Although we acknowledge that changes made pursuant to Requirement R6 of the regional Reliability Standard will not always be corrective changes made in response to event assessments pursuant to the Requirements of PRC–006–1, Requirement R6 is broad enough to encompass corrective changes, thus creating a conflict between the regional Reliability Standard and PRC–006–1 under the proscribed interpretation. Thus, the Commission will not read Requirement R6 as providing a UFLS entity with the discretion not to follow the schedule set by the planning coordinator when the schedule is less than 18 months.[25]

B. Violation Risk Factors and Violation Severity Levels

19. NERC states that the VRFs and VSLs for the proposed regional Reliability Standard were developed and reviewed for consistency with NERC and Commission guidelines. After reviewing the assigned VRFs and VSLs for PRC–006–SERC–01 in Exhibit E, the Commission agrees, with one modification, that the proposed VRF and VSL assignments appear consistent with Commission guidelines. Therefore, the Commission proposes to approve, with one modification, the VRFs and VSLs assigned to the main Requirements in regional Reliability Standard PRC–006–SERC–01.

20. We propose to direct NERC to modify the VRF assigned to Requirement R6 from "medium" to "high." In the petition, NERC states that Requirement R9 of PRC–006–1 and Requirement R6 address "a similar reliability goal."[26] However, NERC states that while Requirement R9 of PRC–006–1 addresses UFLS scheme implementation and has a VRF of "high," Requirement R6 only addresses the timing of implementation and is, therefore, appropriately assigned a "medium" VRF.[27] Guideline 3 of the Commission's VRF Guidelines states that "[a]bsent justification to the contrary, the Commission expects the assignment of Violation Risk Factors corresponding to Requirements that address similar reliability goals in different Reliability Standards would be treated comparably."[28] As NERC notes, Requirement R6 and Requirement R9 of proposed PRC–006–1 address "a similar reliability goal." While NERC explains in its filing that the specific topics addressed by each Requirement are different, the fact that they address a similar reliability goal suggests that they should be treated comparably and each given a "high" VRF, consistent with Guideline 3.

21. In addition, in Guideline 5 of the VRF Guidelines, the Commission indicated that, for Requirements with co-mingled reliability objectives, "the Violation Risk Factor assignment for such Requirements is not watered down to reflect the lower risk level associated with the less important objective of the Reliability Standard."[29] NERC states in the petition that Requirement R6 combines the lesser risk reliability objective of establishing a maximum time frame for implementing changes to UFLS schemes with the higher risk reliability objective of actually implementing changes to UFLS schemes.[30] As a result, consistent with Guideline 5, the Commission believes that proposed Requirement R6 should be assigned a "high" VRF. We seek comment on this proposed directive.

C. Implementation Plan and Effective Date

22. NERC states that the implementation time for the proposed regional Reliability Standard is reasonable, as it balances the need for reliability with the practicability of implementation. The Commission proposes to accept the implementation plan and effective date proposed by NERC.

III. Information Collection Statement

23. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[31] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these

[21] NERC stated:

The amount of time that a UFLS entity has to implement corrections will be established by the Planning Coordinator, as specified in Requirement R9 of PRC–006–1. The time allotted for corrections will depend on the extent of the deficiencies identified. The schedule specified by the Planning Coordinator will consider the time necessary for budget planning and implementation, recognizing that operating and maintenance budgets normally will not be sufficient to address major revisions and allowances will be necessary for inclusion of approved changes in budgeting cycles.

Order No. 763, 139 FERC ¶ 61,098 at P 48 (*citing* NERC Comments at 8).

[22] Order No. 763, 139 FERC ¶ 61,098 at P 48.

[23] NERC Petition at 18–19.

[24] *Id.* at 18.

[25] In Order No. 693, the Commission explained that "while Measures and Levels of Non-Compliance provide useful guidance to the industry, compliance will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System." Order No. 693, 118 FERC ¶ 61,218 at P 253. Similarly, in the immediate proceeding, we consider Requirement R6 the "core obligation" for purposes of determining compliance, while the related "rationale statement" is viewed as providing useful guidance but not setting compliance obligations. *See also id.* P 280 ("the Requirements in each Reliability Standard are core obligations" and compliance Measures "provide useful guidance * * *").

[26] *See* NERC Petition, Exhibit E at 16.

[27] *Id.*

[28] *North American Electric Reliability Corp.*, 119 FERC ¶ 61,145, at P 25 (2007).

[29] *Id.* P 32.

[30] *See* NERC Petition, Exhibit E at 17.

[31] 5 CFR 1320.11.

collections of information unless the collections of information display a valid OMB control number.

24. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

25. This Notice of Proposed Rulemaking proposes to approve regional Reliability Standard PRC–006–SERC–01. This is the first time NERC has requested Commission approval of this proposed regional Reliability Standard. NERC states in its petition that UFLS requirements had been in place at a continent-wide level and within SERC for many years prior to implementation of the Commission-approved Reliability Standards in 2007. Because the UFLS requirements have been in place prior to the development of PRC–006–SERC–01, the proposed regional Reliability Standard is largely associated with requirements the applicable entities are already following.[32] The proposed regional Reliability Standard, PRC–006–SERC–01, is designed to ensure that automatic UFLS protection schemes designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region are coordinated so they may effectively mitigate the consequences of an underfrequency event. The proposed regional Reliability Standard is only applicable to generator owners, planning coordinators, and UFLS entities in the SERC Region. The term "UFLS entities" means all entities that are responsible for the ownership, operation, or control of automatic UFLS equipment as required by the UFLS program established by the planning coordinators. Such entities may include distribution providers and transmission owners. The reporting requirements in proposed regional Reliability Standard PRC–006–SERC–01 only pertain to entities within the SERC Region.

26. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of May 29, 2012. According to the NERC compliance registry, there are 21 planning coordinators and 104 generator owners within the SERC Region. The individual burden estimates are based on the time needed for planning coordinators to incrementally gather data, run studies, and analyze study results to design or update the UFLS programs that are required in the regional Reliability Standard in addition to the requirements of the NERC Reliability Standard PRC–006–1.[33] Additionally, generator owners must provide a detailed set of data and documentation to SERC within 30 days of a request to facilitate post event analysis of frequency disturbances. These burden estimates are consistent with estimates for similar tasks in other Commission-approved Reliability Standards.

PRC–006–SERC–01 (Automatic underfrequency load shedding requirements)[34]	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
PCs*: Design and document Automatic UFLS Program	21	1	8	168
PCs: Provide Documentation and Data to SERC			16	336
GOs*: Provide Documentation and Data to SERC	104	1	16	1,664
GOs: Record Retention			4	416
Total				2,584

* PC=planning coordinator; GO=generator owner.

Total Annual Hours for Collection: (Compliance/Documentation) = 2,584 hours.

Total Reporting Cost for planning coordinators: = 504 hours @ $120/hour = $60,480.

Total Reporting Cost for generator owners: = 1,664 hours @ $120/hour = $199,680.

Total Record Retention Cost for generator owners: 416 hours @ $28/hour = $11,647.

Total Annual Cost (Reporting + Record Retention)[35]: = $60,480 + $199,680 +$11,648 = $271,808.

Title: Mandatory Reliability Standards for the SERC Region.

Action: Proposed Collection FERC–725K.

OMB Control No.: To be determined.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This proposed rule proposes to approve the regional Reliability Standard pertaining to automatic underfrequency load shedding. The proposed regional Reliability Standard helps ensure the reliable operation of the Bulk-Power System by arresting declining frequency and assisting recovery of frequency following system events leading to frequency degradation.

Internal Review: The Commission has reviewed the proposed regional Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if accepted, should conform to the Commission's expectation for UFLS programs as well as procedures within the SERC Region.

27. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE.,

[32] *See* 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.*, in compiling and maintaining business records) will be excluded from the 'burden' if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

[33] The burden estimates for Reliability Standard PRC–006–1 are included in Order No. 763 and are not repeated here.

[34] Proposed regional Reliability Standard PRC–006–SERC–01 applies to planning coordinators, UFLS entities and generator owners. However, the burden associated with the UFLS entities is not new because it was accounted for under Commission-approved Reliability Standards PRC–006–1, PRC–007–0 and PRC–009–0.

[35] The hourly reporting cost is based on the cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, phone: (202) 502–8663, fax: (202) 273–0873].

28. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM12–09 and an OMB Control Number to be determined.

IV. Environmental Analysis

29. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[36] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[37] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Certification

30. The Regulatory Flexibility Act of 1980 (RFA)[38] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[39] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[40]

31. Proposed regional Reliability Standard PRC–006–SERC–01 proposes to establish consistent and coordinated requirements for the design, implementation, and analysis of automatic UFLS schemes among all applicable entities within the SERC Region. It will be applicable to planning coordinators, generator owners and entities that are responsible for the ownership, operation, or control of UFLS equipment. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that perhaps as many as 1 small entity is registered as a planning coordinator and 5 small entities are registered as generator owners in the SERC Region. The Commission estimates that the small planning coordinator to whom the proposed regional Reliability Standard will apply will incur compliance costs of $2,880 ($2,880 per planning coordinator) associated with the proposed regional Reliability Standard's requirements. The small generator owners will incur compliance and record keeping costs of $10,160 ($2,032 per generator owner). Accordingly, proposed regional Reliability Standard PRC–006–SERC–01 should not impose a significant operating cost increase or decrease on the affected small entities.

32. Further, NERC explains that the cost for smaller entities to implement regional Reliability Standard PRC–006–SERC–01 was considered during the development process. The Reliability Standard PRC–006–1 requires a planning coordinator to identify which entities will participate in its UFLS scheme, including the number of steps and percent load that UFLS entities will shed. The standard drafting team recognized that UFLS entities with a load of less than 100 MW may have difficulty in implementing more than one UFLS step and in meeting a tight tolerance. Therefore, the standard drafting team included Requirement R5, which states that such small entities shall not be required to have more than one UFLS step, and sets their implementation tolerance to a wider level. Requirement R5 limits additional compliance costs for smaller entities to comply with the regional Reliability Standard.

33. Based on this understanding, the Commission certifies that the regional Reliability Standard will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Comment Procedures

34. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 24, 2012. Comments must refer to Docket No. RM12–9–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

35. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

36. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

37. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

38. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

39. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

[36] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969*, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[37] 18 CFR 380.4(a)(2)(ii).

[38] 5 U.S.C. 601–612.

[39] 13 CFR 121.101.

[40] 13 CFR 121.201, Sector 22, Utilities & n.1.

40. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18009 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 543 and 547

Minimum Internal Control Standards and Technical Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 1, 2012, the National Indian Gaming Commission (NIGC) published in the **Federal Register** two notices of proposed rulemaking for public comment. The deadline for submission of public comments was July 31, 2012. In response to public requests to extend the comment period, the NIGC has determined that an extension of the end of the public comment period from July 31, 2012 until August 15, 2012, is appropriate. This action will allow interested persons additional time to analyze the proposed rules and prepare their comments.

DATES: The comment period for the proposed rules published June 1, 2012, at 77 FR 32444 and 77 FR 32465, is extended. Comments on the proposed rules must be received on or before August 15, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah Walters, National Indian Gaming Commission, 1441 L Street NW., Suite 9100 Washington, DC 20005. Telephone: 202–632–7003; email: *reg.review@nigc.gov*.

SUPPLEMENTARY INFORMATION: Part 543 addresses minimum internal control standards (MICS) for Class II gaming operations. The regulations require tribes to establish controls and implement procedures at least as stringent as those described in this Part to maintain the integrity of the gaming operation and minimize the risk of theft. The MICS were last amended in 2009 in the first phase of what was intended to be a multi-phase process of revising the MICS and separating Class II and III controls. This proposed rule furthers that multi-phase process and includes amendments to update the MICS to reflect widespread technological advances in the industry.

Dated: July 16, 2012.

Tracie L. Stevens,

Chairwoman.

Daniel J. Little,

Commissioner.

[FR Doc. 2012–17649 Filed 7–23–12; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1015; FRL– 9703–6]

Approval and Promulgation of Implementation Plans; North Carolina; 110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) revisions, submitted by the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), as demonstrating that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. DAQ certified that the North Carolina SIP contains provisions that ensure the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in North Carolina (hereafter referred to as "infrastructure submissions"). EPA is proposing to determine that North Carolina's infrastructure submissions, provided to EPA on April 1, 2008, and on September 21, 2009, addressed all the required infrastructure elements for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with the exception of sections 110(a)(2)(C), 110(a)(2)(E)(ii) and 110(a)(2)(J). With respect to sections 110(a)(2)(C) related to PSD requirements, 110(a)(2)(E)(ii) and 110(a)(2)(J) related to PSD requirements, EPA is proposing to conditionally approve these requirements.

DATES: Written comments must be received on or before August 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1015, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2010–1015," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–1015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997 (62 FR 38652), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) 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/m³. See 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the "infrastructure" requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS," making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*see* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). North Carolina's infrastructure submissions were received by EPA on April 1, 2008, for the 1997 annual $PM_{2.5}$ NAAQS, and on September 21, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on October 1, 2008, and March 21, 2010, respectively. North Carolina was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the "infrastructure" requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the North Carolina 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i)(II) visibility requirements, by September 30, 2012. On July 20, 2011, EPA published a final rulemaking disapproving the interstate transport requirements for section 110(a)(2)(D)(i) for the 2006 24-hour $PM_{2.5}$ NAAQS for North Carolina. *See* 76 FR 43167.

Today's action is proposing to approve in part, and to conditionally approve in part North Carolina's infrastructure submissions for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (M), with the exception of sections 110(a)(2)(C) related to PSD requirements, section 110(a)(2)(D)(i) interstate transport requirements, 110(a)(2)(E)(ii) and 110(a)(2)(J) related to PSD requirements. With respect to sections 110(a)(2)(E)(ii), and sections 110(a)(2)(C) and 110(a)(2)(J) as they relate to PSD requirements, EPA is proposing to conditionally approve North Carolina's infrastructure SIP as it relates to these requirements. Today's

action is not approving any specific rule, but rather proposing that North Carolina's already approved SIP meets—or in the case of the elements proposed for conditional approval will meet—, with changes, certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, some states may need to adopt language specific to the $PM_{2.5}$ NAAQS to ensure that they have adequate SIP provisions to implement the $PM_{2.5}$ NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" and September 25, 2009, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards."

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

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from North Carolina.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did

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

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

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Interstate transport requirements were formerly addressed by North Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve North Carolina SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56914 (October 5, 2007). In so doing, North Carolina CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (Transport Rule). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," and the September 25, 2009, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

[5] See Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for North Carolina.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)" and that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that "each" SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general "infrastructure SIP" for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter "interstate transport" provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's implementation plan contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule," 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase "contribute significantly to nonattainment").

[8] *See Id.*, 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," from William T. Harnett, Director, Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.*, the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements "as applicable." In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the "infrastructure" elements for SIPs, which it further described as the "basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards."[12] As further identification of these basic structural SIP requirements, "attachment A" to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended "to constitute an interpretation of" the requirements, and was merely a "brief description of the required elements."[13] EPA also stated its belief that with one exception, these requirements were "relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions."[14] However, for the one exception to that general assumption (*i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for North Carolina.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern,

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] *See* "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the "2007 Guidance").

[12] *Id.*, at page 2.

[13] *Id.*, at attachment A, page 1.

[14] *Id.*, at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so "self explanatory," and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] *See* "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)," from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the "2009 Guidance").

review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how North Carolina addressed the elements of sections 110(a)(1) and (2) "Infrastructure" provisions?

North Carolina's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission limits and other control measures:* North Carolina's SIP provides an overview of the provisions of the North Carolina Air Pollution Control Regulations relevant to air quality control regulations. The regulations described below have been federally approved in the North Carolina SIP and include enforceable emission limitations and other control measures. NCAC 2D.0400, *Ambient Air Quality Standards*, and 2D.0500, *Emissions Control Standards*, establish emission limits for $PM_{2.5}$ and address the required control measures, means and techniques for compliance with the $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that the provisions contained in these regulations and North Carolina's practices are adequate to protect the $PM_{2.5}$ annual and 24-hour NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* NCAC 2D.0600, *Monitoring*, and 2D.0806, *Ambient Monitoring and Modeling Analysis*, along with the North Carolina Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2011, North Carolina submitted its plan to EPA, and on October 20, 2011, EPA approved this plan. North Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–1015. EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Regulation NCAC 2D.0530, *Prevention of Significant Deterioration*, and 2D.0531, *Sources in a Nonattainment Area*, pertain to the construction or modification of any major stationary source in areas designated as attainment, nonattainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. These provisions are designed to ensure that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. NCAC 2D.0531 also sets the permitting requirements for areas in or around nonattainment areas. On July 10, 2012, North Carolina submitted a letter to EPA to provide the schedule to

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. *See*, "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision," 74 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

address outstanding requirements related to the $PM_{2.5}$ standard for its PSD program and committing to providing the necessary SIP revision to address its SIP deficiencies related to the NSR $PM_{2.5}$ Rule requirements. Based on North Carolina's commitment, EPA is proposing to conditionally approve North Carolina's 110(a)(2)(C) infrastructure SIP consistent with section 110(k)(4) of the Act. EPA intends to move forward with finalizing the conditional approval consistent with section 110(k)(4) of the Act.

In this action, EPA is also proposing to conditionally approve North Carolina's infrastructure SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* NCAC 2D.0530, *Prevention of Significant Deterioration*, 2D.0531, *Sources in a Nonattainment Area*, and 2D.0532, *Sources Contributing to an Ambient Violation*, describe how the State will notify neighboring states of potential impacts from new or modified sources. North Carolina does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

5. 110(a)(2)(E) *Adequate resources:* EPA is proposing two separate actions with respect to the sub-elements required pursuant to section 110(a)(2)(E). Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve North Carolina's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to conditionally approve this sub-element. EPA's rationale for today's proposals respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), EPA notes that DAQ is responsible for adopting air quality rules, revising SIPs, developing and tracking the budget, establishing the title V fees, and other planning needs. DAQ also coordinates agreements with local air pollution control programs. Additionally, the SIP submittal cover letter provided by North Carolina certifies the sufficiency of the state program with 110(a)(2)(E)(i) and (iii) requirements. As evidence of the adequacy of DAQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to North Carolina on March 17, 2011, outlining 105 grant commitments and the current status of these commitments for fiscal year 2010. The letter EPA submitted to North Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0352. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues for fiscal year 2010, therefore, North Carolina's grants were finalized and closed out. EPA has made the preliminary determination that North Carolina has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State Law has been used to carry out the state's implementation plan and related issues. North Carolina's authority is included in all prehearings and final SIP submittal packages submitted for approval by EPA. EPA has made the preliminary determination that North Carolina has adequate resources for implementation of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

As discussed above, with respect to sub-element 110(a)(2)(E)(ii), EPA is proposing to conditionally approve North Carolina's infrastructure SIP as to this requirement. North Carolina's April 1, 2008, and September 21, 2009, infrastructure certification letters did not certify the adequacy of the State's implementation plan to meet the requirements of section 110(a)(2)(E)(ii) (requiring state compliance with section 128 of the CAA), and presently North Carolina's SIP does not include provisions to meet section 128 requirements.

The section 128 State Board requirements—as applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii)—provide at subsection (a)(1) that each SIP shall contain requirements that any board or body which approves permits or enforcement orders be subject to the described public interest and income restrictions. It further requires at subsection (a)(2) that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. EPA's proposed conditional approval of North Carolina's 110(a)(2)(E)(ii) infrastructure SIP is based upon the State's commitment to adopt specific enforceable measures related to both 128(a)(1) and 128(a)(2) to address current deficiencies in the North Carolina SIP.

For purposes of section 128(a)(1), initial permit approvals and enforcement orders are issued by delegated officials within NC DENR. Pursuant to N.C.G.S. § 143–215.114A, the Secretary NC DENR is authorized to assess civil penalties for violations of the State's Air Pollution Control laws. NC DENR is also authorized pursuant to N.C.G.S. § 143–215.114C to request the Attorney General of the State to institute a civil action seeking injunctive relief to restrain the violation or threatened violation of the State's Air Pollution Control laws. The North Carolina

Environmental Management Commission is authorized pursuant to N.C.G.S. § 143–215.108, to approve Air Pollution Control permits in the State, however, the Commission has delegated by regulation this authority to the Secretary of the Department of Environment, Health, and Natural Resources. *See* 15A N.C. Admin. Code 02A.0105(a)(2).[19] As such, EPA is proposing to conditionally approve element 110(a)(2)(E)(ii) with respect to 128(a)(1) based upon a commitment by the State to timely submit any SIP revisions necessary to remove the Environmental Management Commission's authority to approve permits or enforcement orders under the State's Air Pollution Act.[20]

Regarding section 128(a)(2) (also made applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii)), North Carolina has committed to EPA to submit for incorporation into the SIP relevant provisions of N.C.G.S. § 138A, Article 3: *Public Disclosure of Economic Interests,* sufficient to satisfy the conflict of interest provisions applicable to the head of NC DENR and those officials within the Department delegated his authority.

As a result, EPA is proposing to conditionally approve North Carolina's infrastructure SIP with respect to element 110(a)(2)(E)(ii) consistent with section 110(k)(4) of the CAA. North Carolina's above-described commitments are contained in the State's January 11, 2012, letter of commitment submitted to EPA in connection with North Carolina's infrastructure submittal for purposes of the 1997 Ozone NAAQS. The letter North Carolina submitted can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0352. In the letter of commitment, North Carolina committed to adopt specific enforceable measures related to both CAA sections 128(a)(1) and 128(a)(2) to address deficiencies in the North Carolina SIP related to CAA section 110(a)(2)(E)(ii). Notably, changes to North Carolina rules regarding the 1997 Ozone NAAQS are the same types of changes that would be required as part of today's proposed conditional approval for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA previously finalized a conditional approval regarding sub-element 110(a)(2)(E)(ii) for the 1997 Ozone NAAQS. 77 FR 5703 (February 6, 2012).

Consistent with the State's January 11, 2012, commitment, North Carolina must submit to EPA by February 6, 2013, SIP revisions adopting specific enforceable measures related to both CAA sections 128(a)(1) and 128(a)(2). If the State fails to submit these revisions by February 6, 2013, a final conditional approval would then automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, today's conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, North Carolina's infrastructure SIP will be fully approved in its entirety and replace the conditionally approved element in the SIP.

6. 110(a)(2)(F) Stationary source monitoring system: North Carolina's infrastructure submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. North Carolina DAQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in NCAC 2D.0605, *General Recordkeeping and Reporting Requirements,* 2D.0613, *Quality Assurance Program,* and 2D.0614, *Compliance Assurance Monitoring.* Additionally, North Carolina is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. North Carolina made its latest update to the NEI on December 19, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

7. 110(a)(2)(G) *Emergency power:* NCAC 2D.0300, *Air Pollution Emergencies,* authorizes the North Carolina DAQ Director to determine the existence of an air pollution emergency and it describes the preplanned abatement strategies triggered by the occurrence of such an emergency. These criteria have previously been approved by EPA. On September 25, 2009, EPA released the guidance entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)." This guidance clarified that "to address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, IA, or Priority II by the 'Prevention of Air Pollution Emergency Episodes' rule at 40 CFR 51.150, must develop emergency episode contingency plans." EPA's September 25, 2009, guidance also states that "until the Agency finalized changes to the emergency episode regulation to establish for $PM_{2.5}$ specific levels for classifying areas as Priority I, IA, or II for $PM_{2.5}$, and to establish a significant harm level (SHL) * * *," it recommends that states with a 24-Hour $PM_{2.5}$ concentration above 140 $\mu g/m^3$ (using the most recent three years of

[19] Pursuant to a recent North Carolina law, which became effective no later than June 15, 2012, final decisions on contested cases involving permits and enforcement orders are made by individual Administrative Law Judges in the North Carolina Office of Administrative Hearings. *See* North Carolina Session Law 2011–398, Section 18. However, NC DENR remains the permit-issuing authority.

[20] Pursuant to section 55.2 of N.C. Session Law 2011–398, the North Carolina Office of Administrative Hearings is directed to seek U.S. EPA approval to become an agency responsible for administering programs under the Clean Air Act. This ongoing separate process may result in additional SIP revisions implicating section 110(a)(2)(E)(ii). Any such actions are distinct from today's proposed actions and would be addressed in a separate rulemaking.

data) develop an emergency episode plan. For states where this level has not been exceeded, the state can certify that it has appropriate general emergency powers to address $PM_{2.5}$ related episodes, and that no specific emergency episode plans are needed at this time. On September 19, 2008, DAQ submitted a letter to EPA verifying that it is a Class III Priority Area and is exempt from adopting emergency episode plan for $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for emergency powers related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

8. 110(a)(2)(H) Future SIP revisions: As previously discussed, DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. North Carolina has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the PM NAAQS. Specific to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, North Carolina's submissions have included:

- August 21, 2009, Hickory $PM_{2.5}$ Attainment Demonstration;
- August 21, 2009, Triad $PM_{2.5}$ Attainment Demonstration;
- December 18, 2009, Triad $PM_{2.5}$ Redesignation Request and Maintenance Plan; and,
- December 18, 2009, Hickory $PM_{2.5}$ Redesignation Request and Maintenance Plan.

EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

9. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* NCAC 2D.0530, *Prevention of Significant Deterioration*, and 2D.0531, *Sources in a Nonattainment Area*, as well as North Carolina's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. North Carolina adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires DAQ to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved North Carolina's consultation procedures on December 27, 2002 (See 67 FR 78983). Additionally, DAQ submitted a regional haze plan which outlines its consultation practices with Federal Land Managers. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J) (127 public notification) *Public notification:* DAQ has public notice mechanisms in place to notify the public of $PM_{2.5}$ and other pollutant forecasting, including an air quality monitoring Web site providing $PM_{2.5}$ alerts, *http://xapps.enr.state.nc.us/aq/ForecastCenter*. North Carolina also has an outreach program to educate the public and promote voluntary emissions reduction measures including the "Turn Off Your Engine" idling reduction program. NCAC 2D.0300, *Air Pollution Emergencies*, requires that DAQ notify the public of any air pollution episode or NAAQS violation. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

11. 110(a)(2)(J) (PSD) *PSD and visibility protection:* North Carolina demonstrates its authority to regulate new and modified sources of PM to assist in the protection of air quality in NCAC 2D.0530, *Prevention of Significant Deterioration*, and 2D.0531, *Sources in a Nonattainment Area*, which describe the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. This ensures that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. NCAC 2D.0531 also sets the permitting requirements for areas in or around nonattainment areas. As with infrastructure element 110(a)(2)(C), infrastructure element 110(a)(2)(J) of North Carolina's SIP does not include provisions to meet all the requirements for NSR/PSD related to the $PM_{2.5}$ standard. As noted above, on July 10, 2012, North Carolina submitted a letter to EPA to provide the schedule to address outstanding requirements related to the $PM_{2.5}$ standard for its PSD program and committing to providing the necessary SIP revision to address the $PM_{2.5}$ NSR/PSD requirements for which the SIP is currently deficient. As a result, EPA is proposing to conditionally approve North Carolina's infrastructure SIP with respect to element 110(a)(2)(J) in accordance with section 110(k)(4) of the Act. EPA intends to move forward with finalizing the conditional approval consistent with section 110(k)(4) of the Act.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C.

12. 110(a)(2)(K) *Air quality and modeling/data:* NCAC 2D.0300, *Air Pollution Emergencies*, and NCAC 2D.0806, *Ambient Monitoring and Modeling Analysis*, require that air modeling be conducted to determine permit applicability. These regulations demonstrate that North Carolina has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(L) *Permitting fees:* North Carolina addresses the review of construction permits as previously discussed in 110(a)(2)(C) above. Permitting fees in North Carolina are collected through the State's federally-approved title V fees program, according to State's federally-approved title V fees program according to State Regulation NCAC 2Q.0200, *Permit Fees*. EPA has made the preliminary determination that North Carolina's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

14. 110(a)(2)(M) *Consultation/participation by affected local entities:*

NCAC 2Q.0307, *Public Participation Procedures* requires that DAQ notify the public of an application, a preliminary determination, the activity or activities involved in a permit action, any emissions associated with a permit modification, and the opportunity for comment prior to making a final permitting decision. Furthermore, DAQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

EPA is now proposing two related types of actions. First, EPA is proposing to determine that the North Carolina SIP is currently adequate, as explained in North Carolina's April 1, 2008, and September 21, 2009, submittals, to meet the requirements of CAA 110(a)(1) and (2)(A)–(B), (D)–(H), (K)–(M), pursuant to EPA's October 2, 2007, and September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in North Carolina. Second, EPA is proposing to conditionally approve North Carolina's infrastructure submissions for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with regard to CAA sections 110(a)(2)(C), 110(a)(2)(E)(ii) and 110(a)(2)(J).

VI. Statutory and Executive Order Reviews

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

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

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, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 13, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–18051 Filed 7–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0026, FRL–9704–5]

Notice of Data Availability for Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability (NODA).

SUMMARY: EPA is providing notice that information has been posted in the docket pertaining to EPA's proposed action on the State Implementation Plan (SIP) revision submitted by the State of Wyoming on January 12, 2011, that addresses regional haze. (Docket ID No. EPA–R08–OAR–2012–0026). This information is relevant to the portion of the rulemaking pertaining to the proposed Federal Implementation Plan (FIP) and proposals in the alternative for PacifiCorp Jim Bridger Unit 1 and Unit 2. EPA is requesting comment on the new data provided in the docket. This information could impact EPA's final decision on the rulemaking as it pertains to Jim Bridger Unit 1 and Unit 2.

DATES: Comments on the NODA must be received on or before August 3, 2012. This date corresponds to the date comments must be received for the proposed rulemaking.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0026, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: r8airrulemakings@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0026. 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://ww.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Proposed Rulemaking

Detailed background information describing the proposed rulemaking may be found in a previously published document: *Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze;* Proposed Rule (77 FR 33022, June 4, 2012).

III. New Information Placed in the Docket

EPA requests comment on the information described below that has been added to docket EPA–R08–OAR–2012–0026.

- A July 12, 2012 letter from Micheal Dunn, PacifiCorp, to Carl Daly, EPA Region 8. The information provided in the letter is to support EPA's third proposal in the alternative for Jim Bridger Unit 1 and Unit 2 as described in the proposed rulemaking.

Dated: July 16, 2012.

Judith Wong,

Acting Regional Administrator, Region 8.

[FR Doc. 2012–18075 Filed 7–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0566; FRL–9703–8]

Limited Approval and Disapproval of Air Quality Implementation Plans; Nevada; Clark County; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Clark County portion of the applicable state implementation plan (SIP) for the State of Nevada. The submitted revisions include new and amended rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA). The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current Clark County permitting rules and to set the stage for remedying certain deficiencies in these rules. If finalized as proposed, this limited disapproval action would trigger an obligation on EPA to promulgate a Federal

Implementation Plan unless Nevada submits and we approve SIP revisions that correct the deficiencies within two years of the final action, and for certain deficiencies the limited disapproval would also trigger sanctions under section 179 of the CAA unless Nevada submits and we approve SIP revisions that correct the deficiencies within 18 months of final action.

DATES: Written comments must be received on or before August 23, 2012.

ADDRESSES: Submit comments, identified by Docket ID Number EPA–R09–OAR–2012–0566, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, by phone: (415) 972–3534 or by email at *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

Table of Contents

I. The State's Submittals

A. Which rules did the State submit?

On February 11, 2010, September 1, 2010, and May 22, 2012, the Clark County Department of Air Quality (Clark or DAQ) submitted new and amended regulations to EPA for approval as revisions to the Clark County portion of the Nevada SIP under the Clean Air Act (CAA or Act). Collectively, the submitted regulations (referred to as "Sections") comprise DAQ's current program for preconstruction review and permitting of new or modified stationary sources under DAQ jurisdiction in Clark County, including related definitions.[1] These SIP revision submittals, referred to herein as the "NSR SIP submittal" or "submitted NSR rules," represent a comprehensive revision to Clark County's preconstruction review and permitting program and are intended to satisfy the requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act. These preconstruction review and permitting programs are often collectively referred to as "New Source Review" (NSR).

It should be noted that pursuant to State law, the State of Nevada, not a local air district, has jurisdiction over plants which generate electricity by using steam produced by the burning of fossil fuel within the State of Nevada. The applicable State law, now codified in Nevada Revised Statutes (NRS) 445B.500, was approved by EPA in 1980 as NRS 445.546(4). *See* 45 FR 46384 (July 10, 1980) (now codified at 40 CFR 52.1470(e)). Thus, the State, not DAQ, has jurisdiction over such plants that are located or that will be constructed within Clark County. The submitted NSR rules therefore apply to stationary sources located in Clark County, except for plants which generate electricity by using steam produced by the burning of fossil fuel, which are subject to the Nevada Division of Environmental Protection's (NDEP) jurisdiction.

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by DAQ and submitted to EPA by NDEP, which is the governor's designee for Nevada SIP submittals.

TABLE 1—SUBMITTED NSR RULES[2]

Section No.	Section title	Adopted	Submitted
0	Definitions	3/6/12	5/22/12
12.0	Applicability, General Requirements and Transition Procedures	11/3/09	2/11/10
12.1	Permit Requirements for Minor Sources	11/3/09	2/11/10
12.2	Permit Requirements for Major Sources in Attainment Areas (Prevention of Significant Deterioration).	3/6/12	5/22/12
12.3	Permit Requirements for Major Sources in Nonattainment Areas	5/18/10	9/01/10

[1] The submitted program relies upon certain definitions contained in submitted Section 0 as well as the definition of "ambient air quality standards" in DAQ Section 11, which EPA previously approved into the Nevada SIP (69 FR 54006, September 7, 2004) and is not included in this submittal.

[2] DAQ also included a permitting regulation called "Section 12.11 (General Permits For Minor Stationary Sources)" as part of its NSR SIP Submittal but we are not proposing action on this regulation at this time.

TABLE 1—SUBMITTED NSR RULES[2]—Continued

Section No.	Section title	Adopted	Submitted
12.4	Authority to Construct Application and Permit Requirements For Part 70 Sources[3]	5/18/10	9/01/10

On August 11, 2010 and March 1, 2011, DAQ's February 11, 2010 and September 1, 2010 submittals were deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. We find that DAQ's May 22, 2012 submittal also meets the appendix V completeness criteria. Each of these submittals includes evidence of public notice and adoption of the regulation. While we can act only on the most recently submitted version of each regulation (which supersedes earlier submitted versions), we have reviewed materials provided with previous submittals. Our technical support document (TSD) provides additional background information on each of the submitted rules.

B. What are the existing Clark County rules governing stationary source permits in the Nevada SIP?

The existing SIP-approved NSR program for new or modified stationary sources in Clark County consists of one State regulation and seven Clark County regulations ("Sections"), or portions thereof, which EPA approved on April 14, 1981, June 18, 1982, June 21, 1981, and September 7, 2004. *See* 46 FR 21758 (April 14, 1981) (final rule approving DAQ Section 1); 47 FR 26620 (June 21, 1982) (final rule approving revisions to DAQ Section 1); 47 FR 26386 (June 18, 1982) (final rule approving DAQ Section 16); and 69 FR 54006 (September 7, 2004) (final rule approving, in whole or in part, DAQ Sections 0, 11, 12, 58, and 59, and Nevada Administrative Code (NAC) 445B.22083). Collectively, these regulations established the NSR requirements for both major and minor stationary sources under DAQ jurisdiction in Clark County, including requirements for the generation and use of emission reduction credits in nonattainment areas.

Consistent with Clark's stated intent to have the submitted NSR rules replace the existing SIP NSR program in its entirety, EPA's approval of the regulations identified above in table 1 would have the effect of entirely superseding, or rescinding our prior approval of, all but two of the rules in the current SIP-approved program. Table 2 lists the existing rules in the Nevada SIP governing NSR for stationary sources under DAQ jurisdiction. All of these rules except for Section 11 and NAC section 445B.22083 would be replaced in, or otherwise deleted from, the SIP by the submitted set of rules listed in table 1 if EPA were to take final action as proposed herein. Section 11 is a rule that defines DAQ's "ambient air quality standards." NAC 445B.22083 is a regulation adopted by the Nevada State Environmental Commission (SEC) that prohibits the construction of new power plants or major modifications to existing power plants under State jurisdiction within specified areas designated nonattainment for certain NAAQS within Clark County.[4] Our proposed action would have no effect on Section 11 or NAC 445B.22083, both of which remain part of the applicable Nevada SIP.

TABLE 2—EXISTING SIP RULES GOVERNING NSR FOR STATIONARY SOURCES UNDER DAQ JURISDICTION

Section No.	Section title	Fed. Reg. citation and EPA approval date
0	Definitions	69 FR 54006, 9/7/04.
1	Definitions (33 terms retained in SIP in 69 FR 54006, 9/7/04)	46 FR 21758, 4/14/81 and 47 FR 26620, 6/21/82.
11	Ambient Air Quality Standards	69 FR 54006, 9/7/04.
12	Preconstruction Review for New or Modified Stationary Sources	69 FR 54006, 9/7/04.
16	Operating Permits	47 FR 26386, 6/18/82.
58	Emission Reduction Credits	69 FR 54006, 9/7/04.
59	Emission Offsets	69 FR 54006, 9/7/04.
NAC 445B.22083	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	69 FR 54006, 9/7/04.

C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the new and amended NSR rules submitted by DAQ on February 11, 2010, September 1, 2010, and May 22, 2012, as identified in table 1. We provide our reasoning in general terms below but provide more detailed analysis in our technical support document (TSD), which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted by DAQ governing NSR for stationary sources under DAQ jurisdiction for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164, and the CAA requirements for SIP revisions in CAA section 110(l).[5] As described below,

[3] Section 12.4 also contains requirements to address the CAA title V requirements for operating permit programs, but we are not evaluating the rule for title V purposes at this time. We will evaluate Section 12.4 for compliance with the requirements of title V of the Act and EPA's implementing regulations in 40 CFR part 70 following receipt of an official part 70 program submittal from Clark County containing this rule.

[4] As explained further in the TSD, EPA's approval of NAC 445B.22083 in 2004 resolved a regulatory gap that would otherwise exist in connection with NSR for major stationary sources and major modification under NDEP jurisdiction (*i.e.*, major new or modified plants which generate electricity by using steam produced by the burning of fossil fuel, *see* NRS 445B.500) within the nonattainment portions of Clark County.

[5] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing

EPA is proposing a limited approval and limited disapproval of the submitted NSR rules.

B. Do the rules meet the evaluation criteria?

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

Based on our review of the public process documentation included in the February 11, 2010, September 1, 2010, and May 22, 2012 submittals, we find that DAQ has provided sufficient evidence of public-notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each "Section" of DAQ's submitted NSR rules in accordance with the CAA and regulatory requirements that apply to: (1) General preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act, (2) PSD permit programs under part C of title I of the Act, and (3) Nonattainment NSR permit programs under part D of title I of the Act. For the most part, the submitted NSR rules satisfy the applicable requirements for these three permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised NSR permitting requirements promulgated by EPA in the last several years, but the submitted NSR rules also contain specific deficiencies which prevent full approval. Below, we discuss generally our evaluation of DAQ's submitted NSR rules and the deficiencies that are the basis for our proposed limited disapproval of these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP 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 parts C and D" of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified "major" stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the NAAQS are achieved. These general pre-construction requirements are commonly referred to as "minor NSR" and are subject to EPA's implementing regulations in 40 CFR 51.160–51.164.

Section 12.1 contains the requirements for review and permitting of individual minor stationary sources under DAQ jurisdiction in Clark County, and Section 12.4 contains the requirements for review and permitting of modifications at major stationary sources that are not "major modifications" and therefore not subject to PSD or Nonattainment NSR. These regulations satisfy most of the statutory and regulatory requirements for minor NSR programs, but Section 12.1 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, one of the key control requirements in Section 12.1 appears to depend upon a definition of "ambient air quality standards" that is not consistent with the NAAQS. Specifically, subsection 12.1.4.1(c) requires that each minor source permit issued by Clark include emission limitations that ensure that "[t]he ambient air quality standards will be attained or maintained" (12.1.4.1(c)) and appears to depend upon DAQ's definition of "ambient air quality standards" in Section 11, which does not include the 2006 24-hour $PM_{2.5}$ NAAQS of 35 ug/m3 or the 2008 Lead (Pb) NAAQS of 15 ug/m3 (rolling 3-month average). *See* 40 CFR 50.13 and 50.16. EPA approved Section 11 into the Clark County portion of the Nevada SIP on September 7, 2004 (69 FR 54006), and at the time this definition was consistent with the Federal NAAQS, but given EPA's promulgation of revised NAAQS for $PM_{2.5}$ and Lead (Pb) in 2006 and 2008, respectively, Section 11 is no longer consistent with the NAAQS. As such, with respect to the 2006 24-hour $PM_{2.5}$ NAAQS and the 2008 Lead NAAQS, Section 12.1 does not provide a means for determining whether the construction or modification of a stationary source will result in a violation of applicable portions of the control strategy or interference with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160.

Second, subsection 12.1.3.6(a)(5) provides that an applicant may identify specific portions of a permit that it wants to be Federally enforceable. This is not consistent with CAA requirements, as all conditions of a permit issued pursuant to a SIP-approved permit program are Federally enforceable. *See* CAA 113, 304; *see also* 40 CFR 52.23. As a general matter, we note that any statement contained in a permit application regarding Federal enforceability has no effect on EPA's or citizens' enforcement authorities under sections 113 and 304 of the Act.

Third, neither Section 12.1 nor Section 12.4 contain a provision addressing, for minor stationary sources, the requirement in 40 CFR 51.160(d) to "provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy."

Fourth, Section 12.1 provides (in subsection 12.1.2(a)) an exemption from permitting requirements for "[c]onstruction and operation of any emission units or performance of any of the activities listed in" a separate rule called Section 12.5, which addresses the operating permit requirements of title V of the CAA. Because Section 12.5 is neither approved into the SIP nor included in the NSR SIP submittal, we cannot conclude that this exemption is appropriate for minor NSR purposes.

Fifth, the applicability provisions in Section 12.1 (in particular the definition of "minor source" in subsection 12.1.1(c)) are deficient as they do not address sources of $PM_{2.5}$ or $PM_{2.5}$ precursor emissions. Pursuant to CAA section 110(a)(2)(C), States were required to amend their minor source programs to include direct $PM_{2.5}$ emissions and precursor emissions in the same manner as included for purposes of $PM_{2.5}$ major NSR. *See* 73 FR 28321, 28344 (May 16, 2008). In the absence of applicability provisions that appropriately capture minor sources of $PM_{2.5}$ or their precursors, Section 12.1 does not provide for protection of the $PM_{2.5}$ NAAQS in the issuance of permits for new or modified minor sources as required by 40 CFR 51.160–51.164.

Finally, Section 12.1 does not contain any provisions designed to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good

prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

engineering practice or air dispersion modeling techniques that do not satisfy the criteria in 40 CFR 51.118(b), as required by 40 CFR 51.164.

Compared to the existing SIP minor NSR program in Section 12 (as adopted October 7, 2003), however, submitted Section 12.1 and Section 12.4 represent an overall strengthening of DAQ's minor NSR program. For example, the new rules establish more detailed monitoring, recordkeeping, and reporting requirements, more specific criteria for permit applications and conditions for permit issuance, and well-defined criteria for the determination of emission limits and standards that represent "reasonably available control technology," which we expect will allow for more effective implementation and enforcement of the requirements applicable to minor stationary sources in Clark County. *See, e.g.,* Section 12.1, subsections 12.1.4.1. and 12.1.5.1, compared with SIP Section 12 (as adopted October 7, 2003), subsections 12.1.1. and 12.8.2.

2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration (PSD) of air quality in areas designated "attainment" or "unclassifiable" for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166 and 40 CFR 52.21. Clark County is currently designated as "attainment" or "unclassifiable/attainment" for all NAAQS pollutants, except for the PM_{10} standard in Las Vegas Valley (hydrographic area #212) and for the 1997 8-hour ozone standard in Las Vegas Valley and additional portions of the county. *See* 40 CFR 81.329.

Section 12.2 and Section 12.4 contain the requirements for review and permitting of PSD sources under DAQ jurisdiction in Clark County. These regulations satisfy most of the statutory and regulatory requirements for PSD permit programs, but Section 12.2 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, the definition of "allowable emissions" in subsection 12.2.2(b) provides for calculation of emissions rates based on "practically enforceable" permit limits, in lieu of federally enforceable limits, but it does not provide criteria by which a limit will be judged to be "practically enforceable" by DAQ. This definition also allows for permit conditions with "future compliance dates" to be used to determine allowable emissions, which is not consistent with EPA's definition of the term in 40 CFR 51.166(b)(16).

Second, the definition of "baseline actual emissions" (BAE) in subsection 12.2.2(c), paragraph (1)(B)(i), includes a requirement to adjust the BAE downward to "exclude any emissions that would have exceeded an emission limitation with which the major stationary source must comply *as of the particular date,* had such major stationary source been required to comply with such limitations during the consecutive 24-month period" (emphasis added). EPA's definition of BAE in 40 CFR 51.166(b)(47)(ii)(*c*) includes a similar provision but requires a downward adjustment in BAE "to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must *currently* comply. * * *" The reference in subsection 12.2.2(c) to an emission limitation that applied "as of the particular date" instead of an emission limitation with which the source must "currently comply" is problematic, as it is not clear which "particular date" the definition refers to.

Third, the definition of "net emissions increase" (NEI) in subsection 12.2.2(ii) contains several provisions in subparagraph (1)(C) for calculating "actual emissions after the contemporaneous project" which are not consistent with EPA's definition of NEI in 40 CFR 51.166(b)(3). EPA's definition of NEI allows for consideration of those emission increases and decreases that are "contemporaneous" with the project under review but does not call for any assessment of actual emissions after a contemporaneous project. 40 CFR 51.166(b)(3). Additionally, subparagraph (1)(C)(ii) allows for the calculation of NEI to be based on "projected actual emissions" in certain cases, which is not allowed under EPA's definition of NEI in 40 CFR 51.166(b)(3).

Fourth, the definition of "major modification" in subsection 12.2.2(dd) is not consistent with EPA's current approach to the treatment of fugitive emissions in applicability determinations for major modifications. Specifically, subsection 12.2.2(dd) requires, in subparagraph (4), that fugitive emissions be excluded from the determination of whether a particular physical or operational change is a major modification "unless the major stationary source is a categorical stationary source or belongs to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act." Although this language is consistent with the text of 40 CFR 51.166(b)(2)(v) as of July 1, 2010, EPA has administratively stayed this paragraph indefinitely, effective March 30, 2011. *See* 76 FR 17548 (final rule effectuating and extending stay of the final rule entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions" ("Fugitive Emissions Rule") published December 19, 2008). The effect of this administrative stay was to revert the treatment of fugitive emissions in applicability determinations to the approach that applied prior to the Fugitive Emissions Rule, thus requiring that fugitive emissions be included in "major modification" applicability determinations for all source categories. 76 FR at 17550, 17551.

Fifth, the definition of "regulated NSR pollutant" in subsection 12.2.2(pp) does not satisfy current requirements regarding identification of precursors and treatment of "condensable particular matter" in PSD applicability determinations. EPA's definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49)(i) requires identification of specific precursors for ozone and $PM_{2.5}$ purposes. Additionally, EPA's definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49) includes a paragraph (vi) stating that on or after January 1, 2011, "gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures" (*i.e.,* condensable particular matter) must be accounted for in applicability determinations and in establishing emissions limitations for particulate matter (PM), $PM_{2.5}$ and PM_{10} in PSD permits. *See* 73 FR 28321 (May 16, 2008) (final rule to implement NSR and PSD requirements for $PM_{2.5}$).

Sixth, one provision governing "Plantwide Applicability Limits" (PALs) in subsection 12.2.19 is not entirely consistent with EPA's requirement regarding the timeframe for adjustment of a PAL to address compliance dates that occur during the PAL effective period. Specifically, where the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, subsection 12.2.9 allows for a PAL to be adjusted "at the time the affected Part 70 Operating Permit is renewed," rather than "at the time of PAL permit renewal *or* title V permit renewal, *whichever occurs first,*" as required by 40 CFR 51.166(w)(10)(v) (emphases added). This is a deficiency

because, although Part 70 permits are renewed more frequently than PAL permits, at any given time it is possible that the expiration date for a PAL permit will occur before the expiration date for a Part 70 permit.

Finally, neither Section 12.2 nor Section 12.4 contains a provision addressing, for new or modified major stationary sources, the requirement in 40 CFR 51.160(d) to "provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy."

Compared to the existing SIP PSD program in Section 12 (as adopted October 7, 2003), however, submitted Section 12.2 and Section 12.4 represent an overall strengthening of DAQ's PSD program, in large part because Section 12.2 includes updated PSD provisions to regulate new or modified major stationary sources of greenhouse gases (GHGs) and $PM_{2.5}$, both of which are unregulated under the existing SIP PSD program. Section 12.2 also satisfies the requirements of EPA's 2002 regulations to revise the NSR programs (67 FR 80186, December 31, 2002) ("NSR Reform" rules), with limited exceptions.

3. Nonattainment New Source Review

Part D of title I of the Act contains the general requirements for areas designated "nonattainment" for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such nonattainment areas, commonly referred to as "Nonattainment New Source Review" or "NSR." EPA's regulations for NSR permit programs are found in 40 CFR 51.165. Clark County is currently designated as "attainment" or "unclassifiable/attainment" for all NAAQS pollutants, with two exceptions: certain portions of Clark County are designated and classified as "marginal" nonattainment for the 1997 8-hour ozone NAAQS, and the Las Vegas planning area within Clark County is designated and classified as "serious" nonattainment for the PM_{10} NAAQS. 40 CFR 81.329.

Section 12.3 and Section 12.4 contain the NSR requirements for review and permitting of major sources and major modifications under DAQ jurisdiction in Clark County. These regulations satisfy most of the statutory and regulatory requirements for NSR permit programs, but Section 12.3 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, the requirements for offsets in Section 12.3, subsection 12.3.6 do not contain adequate provisions to assure that emission offset calculations are based on the same emissions baseline used in the demonstration of reasonable further progress for the relevant NAAQS pollutant (where applicable) and to satisfy EPA's NSR criteria for offset calculations, as required by CAA section 173(a)(1)(A) and 40 CFR 51.165(a)(3).

Second, Section 12.3 does not contain provisions to assure that emissions increases from new or modified major stationary sources are offset by real reductions in "actual emissions" as required by CAA 173(c)(1) because it does not contain adequate criteria for determining whether certain emission reductions may qualify for use as offsets. Subsection 12.3.6 references a separate rule (Section 12.7) for important criteria related to this determination, but Section 12.7 is neither approved into the SIP nor included in the NSR SIP submittal and therefore cannot provide an appropriate basis for evaluating emission reductions for purposes of satisfying the requirements in CAA section 173(c)(1).

Third, Section 12.3 does not adequately address the requirement in CAA section 173(c)(2) to prevent emissions reductions "otherwise required by [the Act]" from being credited for purposes of satisfying the part D offset requirements. Specifically, although subsection 12.3.6.6(a) states that "[e]mission reductions used to satisfy offset requirements must be real, *surplus*, permanent, quantifiable, and federally enforceable" (emphasis added), the definition of the term "surplus" in subsection 12.3.2 is not adequate to ensure that emission reductions required by standards promulgated under CAA section 111 (New Source Performance Standards) or under CAA section 112 (National Emission Standards for Hazardous Air Pollutants) are not credited for purposes of satisfying part D offset requirements.

Fourth, the definition of "baseline actual emissions" (BAE) in subsection 12.3.2(c), paragraph (1)(C), includes a requirement to adjust the BAE downward to "exclude any emissions that would have exceeded an emission limitation with which the major stationary source must comply *as of the particular date*, had such major stationary source been required to comply with such limitations during the consecutive 24-month period" (emphasis added). EPA's definition of BAE in 40 CFR 51.165(a)(1)(xxxv)(B)(*3*) includes a similar provision but requires a downward adjustment in BAE "to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must *currently* comply. * * *" The reference in subsection 12.3.2(c) to an emission limitation that applied "as of the particular date" instead of an emission limitation with which the source must "currently comply" is problematic, as it is not clear which "particular date" the definition refers to.

Fifth, the definition of "major modification" in subsection 12.3.2(x) requires exclusion of two specific types of physical or operational changes that EPA's definition of "major modification" in 40 CFR 51.165(a)(1)(v) does not exclude: (1) the installation or operation of a permanent Clean Coal Technology Demonstration Project that constitutes repowering; and (2) the reactivation of a very clean coal-fired electric utility steam generating unit. Although such exemptions are acceptable for purposes of PSD review (*see* 40 CFR 51.166(b)(2)(iii) and (b)(36)), such exemptions are not permissible for Nonattainment NSR purposes. *See* CAA 415.

Additionally, the definition of "major modification" in subsection 12.3.2(x) is not consistent with EPA's current approach to the treatment of fugitive emissions in applicability determinations for major modifications. As discussed above with respect to the definition of this same term in Section 12.2, EPA has administratively stayed 40 CFR 51.165(a)(1)(v)(G), effective March 30, 2011 (*see* 76 FR 17548), which had the effect of reverting the treatment of fugitive emissions in applicability determinations to the approach that applied prior to the Fugitive Emissions Rule, thus requiring that fugitive emissions be included in "major modification" applicability determinations for all source categories. 76 FR at 17550, 17551.

Sixth, the definition of "regulated NSR pollutant" in subsection 12.3.2(ii) does not satisfy current requirements regarding "condensable particular matter" in NSR applicability determinations. EPA's definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(xxxvii) includes a paragraph stating that on or after January 1, 2011, "gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures" (*i.e.*, condensable particular matter) must be accounted for in applicability determinations and in establishing emissions limitations for particulate matter (PM), $PM_{2.5}$ and PM_{10} in NSR permits. *See* 73 FR 28321.

Seventh, Section 12.3 allows for interpollutant trades between VOC and NO_X emission reductions for purposes

of satisfying offset requirements for ozone, and interpollutant trades among $PM_{2.5}$, SO_2 and NO_X emission reductions for purpose of satisfying offset requirements for $PM_{2.5}$. These provisions do not satisfy EPA's regulatory and policy criteria for approval of such interpollutant trades or interprecursor trading hierarchies. *See* 40 CFR 51.165(a)(11) and "Improving Air Quality with Economic Incentive Programs," U.S. EPA Office of Air and Radiation, January 2001. Although Section 12.3 does not currently apply to $PM_{2.5}$ sources because Clark County is designated attainment/unclassifiable for the 1997 and 2006 p.m.$_{2.5}$ NAAQS, we propose to disapprove this provision because it is contrary to applicable EPA regulations and policy for both ozone and $PM_{2.5}$ purposes.

Eighth, Section 12.3 does not contain any provisions designed to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or air dispersion modeling techniques that do not satisfy the criteria in 40 CFR 51.118(b), as required by 40 CFR 51.164.

Finally, neither Section 12.3 nor Section 12.4 contain a provision addressing, for new or modified major stationary sources, the requirement in 40 CFR 51.160(d) to "provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy."

Compared to the existing SIP NSR program in Section 12 (as adopted October 7, 2003), however, submitted Section 12.3 and Section 12.4 represent an overall strengthening of DAQ's NSR program, in large part because Section 12.3 contains definitions of important NSR terms, such as "potential to emit," that are more consistent with EPA's definitions in 40 CFR 51.165(a) than the definitions used in the SIP NSR program (*see, e.g.*, definition of "total potential to emit" in SIP Section 12, subsection 12.1.6.1). Section 12.3 also satisfies the requirements of EPA's 2002 NSR Reform rules, with limited exceptions.

4. Section 110(l) of the Act

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would "interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Act]."

Our approval of the Clark County NSR SIP submittal (and replacement or supersession of the existing SIP NSR rules) would strengthen the applicable SIP in some specific respects and would relax the SIP in other specific respects. Taken in its entirety, we find that the SIP revision represents a strengthening of Clark County's minor NSR, PSD, and Nonattainment NSR programs compared to the existing SIP programs that we approved in 1982 and 2004, and that our approval of the NSR SIP submittal would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act.

The most significant deficiencies that we have identified in the submitted NSR rules, as discussed in detail earlier in this TSD, are generally as follows: (1) The absence of minor NSR provisions that ensure protection of the 2006 $PM_{2.5}$ NAAQS and 2008 Lead (Pb) NAAQS; (2) minor NSR applicability provisions that do not cover stationary sources of $PM_{2.5}$; (3) deficiencies in the definitions of certain terms used in PSD and Nonattainment NSR (NNSR) applicability determinations; (4) definition of "regulated NSR pollutant" that does not adequately address PSD and NNSR requirements for regulation of condensable particulate matter; (5) deficiencies in the criteria for assessing the quality (or "integrity") of emission reduction credits used to satisfy NNSR offset requirements; and (6) the absence of minor NSR or NNSR provisions to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or unacceptable air dispersion modeling techniques. We identify these as the "most significant" deficiencies because these are the most likely to affect pollutant emissions within Clark County, compared to other deficiencies that we do not expect would significantly affect emissions levels (*e.g.*, administrative requirements for permit issuance).

Many of these deficiencies are related to requirements that came into effect after we last approved Clark County's NSR programs in 1982 and 2004. For example, minor NSR SIP revisions to implement the 2006 $PM_{2.5}$ NAAQS and 2008 Lead (Pb) NAAQS were due in 2009 and 2011, respectively. *See* CAA 110(a). Similarly, SIP revisions to implement EPA's PSD and NNSR requirements for condensable particular matter were due in 2011. *See* 73 FR 28321 (May 16, 2008). With respect to all of these post-2005 requirements, which the existing SIP NSR program does not address, we believe it is reasonable to conclude that our approval of the NSR SIP submittal as a revision to the Nevada SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act, because there is no applicable requirement in the existing SIP program that would be affected by the deficiencies in the submitted NSR rules.

As to the remaining deficiencies, we have evaluated these together with the most significant differences between the two NSR programs (SIP-approved versus the NSR SIP submittal) to evaluate the overall effect that our approval of the NSR SIP submittal might have on the stringency of DAQ's permit programs and the potential air quality impacts of these program revisions. First, certain PSD and NNSR definitions governing applicability determinations in Section 12.2 and Section 12.3 are not as stringent as the corresponding Federal definitions in 40 CFR 51.166 and 51.165, respectively. Second, the offset ratio in Section 12.3 is 1:1, compared to a more stringent ratio of 2:1 in the existing SIP NSR program, and the criteria in Section 12.3 for evaluating the integrity of emissions reduction credits used to satisfy NNSR offset requirements are not adequate to assure actual emission reductions. Third, the minor NSR program and NNSR program (Sections 12.1, 12.3, and 12.4 to some extent) both lack provisions to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or unacceptable air dispersion modeling techniques. Fourth, DAQ has established public notice thresholds for minor NSR (Section 12.1) that exclude from public review the following types of less-environmentally significant minor sources: (1) New minor sources with potential emissions of NAAQS pollutants below 50 tons per year (tpy) for CO; 40 tpy for VOCs, SO_2, or NO_X; 15 tpy for PM_{10}; and 0.6 tpy for Lead (Pb) (*see* subsection 12.1.5.3), and (2) modifications at existing minor sources that result in PTE increases less than 40 tpy for SO_2; 35 tpy for CO; 20 tpy for VOC or NO_X; and 7.5 tpy for PM_{10} (*see* subsection 12.1.6(a)(7)). *Compare with* SIP Section 12, subsection 12.1.1.1 (requiring preconstruction review for "any new stationary source" or "modification" without emissions-based applicability thresholds). Finally, the control standard for minor sources has been changed from "Best Available Control Technology" under the SIP minor NSR program to "Reasonably Available Control Technology" under submitted Section 12.1 (*see* subsection 12.1.3.6(b), (c)).

With respect to the scope of the NSR program, the deficiencies in the

applicability-related definitions in Sections 12.2 and 12.3 and the new *de minimis* thresholds established in Section 12.1 could potentially reduce the number of new or modified stationary sources that are subject to preconstruction review under these programs and thereby relax the NSR program for new and modified sources compared to the SIP-approved program. As to the minor NSR control standard, the NNSR offset requirements, and the absence of provisions related to stack heights, the submitted NSR rules may result in application of less-stringent control technologies on minor sources (from BACT to RACT), potential under estimations of the air quality impacts of stationary source operations and, with respect to ozone precursor and PM_{10} emissions, offset transactions that may not achieve adequate emission reductions.

Several significant improvements in the submitted NSR rules should be considered in assessing the overall impact of these potential program relaxations. First, the potential for reduced numbers of regulated sources is offset to at least some extent by new provisions in Section 12.1 that establish a five-year permit term, thereby mandating a regular review of all minor source permit conditions and source operations, and provisions providing that DAQ may re-open a minor NSR permit at any time for cause. *See* "Proposed Revision to the Clark County Part of the Nevada State Implementation Plan: Minor Source New Source Review Program Rule Adoptions and Revisions," January 29, 2009 (hereinafter "Minor NSR SIP Submittal"), Appendix B: "Technical Requirements."

Second, Section 12.1 requires that each minor NSR permit contain a number of important types of permit terms and conditions which are more specific than required under the SIP NSR program and that strengthen the enforceability of the program—for example, physical descriptions of each emission unit, emission limitations that ensure protection of ambient air quality standards, and more clearly defined monitoring, recordkeeping, and reporting requirements modeled on the CAA's title V operating permit program. *Compare* Section 12.1, subsection 12.1.4.1 (Term and Conditions) with SIP Section 12, subsection 12.8.1.1 (conditions of ATC).

Third, Section 12.1 contains important new conditions for issuance of minor NSR permits, such as the requirement to assure compliance with all applicable SIP requirements. *See* Section 12.1, subsection 12.1.5.1 (Action on Application) compared to SIP Section 12 (as adopted October 7, 2003), subsection 12.8.2 (ATC issuance requirements).

Fourth, both the minor source program in Section 12.1 and the major source programs in Sections 12.2 and 12.3 rely on several new or revised definitions of key terms that are more consistent with Federal definitions (in CAA 302 and 40 CFR part 51, subpart I) than corresponding definitions in the SIP NSR program. *See, e.g.*, definition of "potential to emit" in Section 0[6] compared to definition of "total potential to emit" in SIP Section 12 (as adopted October 7, 2003), subsection 12.1.6.1; new definition of "emission limit" or "emission limitation" in Section 0.

Finally, with respect to the difference between BACT and LAER for minor stationary sources in Clark County, supporting information submitted by DAQ indicates that the shift away from the existing BACT standard in the SIP is not likely to affect emissions to any significant degree given the ambiguities in the SIP rule which undermined the practical enforceability of this standard, and that the RACT standard in submitted Section 12.1 is expected to be equally effective in controlling emissions at minor sources, if not more so given the enhanced compliance provisions. *See* Minor NSR SIP Submittal, Chapter 3: "Technical Support Document for Sections 0, 12.0, 12.1, and 12.11" at 3–20 to 3–28 and Appendix B: "Technical Requirements."

With respect to offset requirements, we note that the SIP NSR program did not require offsets for VOC or NO_X because Clark County was not designated nonattainment for any ozone NAAQS at the time when we approved the SIP program in 2004. *See* Section 59 (Emission Offsets), as adopted October 7, 2003 at Table 59.1.2. The NSR control (LAER) and offset requirements in submitted Section 12.3 therefore ensure greater reductions of ozone precursor emissions compared to the SIP program, which required neither LAER nor offsets for NO_X or VOC.

For PM_{10} purposes, the SIP NSR program required that major stationary sources (*i.e.*, sources with PTE of 70 tpy or more) obtain PM_{10} offsets at a ratio of 2:1, whereas the submitted Section 12.3 requires those same sources to obtain PM_{10} offsets at a ratio of 1:1. *See* Section 59 (Emission Offsets) (as adopted October 7, 2003) at Table 59.1.2 and Section 12.3 (Permit Requirements for Major Sources in Nonattainment Areas) (as adopted May 18, 2010) at Table 12.3–1. This relaxation in the offset ratio for PM_{10} sources applies only to stationary sources locating within the boundaries of the PM_{10} nonattainment area in the Las Vegas planning area (hydrographic area #212), and appears to be counterbalanced by the overall strengthening in the NSR program, as discussed above with respect to both major and minor sources throughout Clark County.

Significantly, the submitted Section 12.2 includes new PSD provisions to regulate new or modified major stationary sources of greenhouse gases (GHGs) and $PM_{2.5}$, both of which are unregulated under the existing SIP PSD program. In addition, both Section 12.2 and Section 12.3 satisfy the requirements of EPA's 2002 NSR Reform rules, with limited exceptions.

In sum, the new and revised provisions in the submitted NSR rules enable DAQ to review source operations on a more regular basis; require DAQ to make specific determinations related to air quality impacts and applicable SIP requirements as part of permit issuance; improve the enforceability of the NSR program through the establishment of more detailed compliance requirements and improved definitions of important terms; establish NNSR requirements for ozone precursor emissions that were not required under the existing SIP program; and establish new PSD provisions for the regulation of GHG and $PM_{2.5}$ emission sources. We find that, on balance, these NSR program improvements outweigh the potential relaxations discussed above compared to the existing SIP program.

In addition, Clark County is currently designated attainment or unclassifiable/attainment for all but two NAAQS pollutants (PM_{10} and 1997 8-hour ozone), and with respect to these two remaining pollutants, EPA has determined based on ambient air monitoring data that the nonattainment areas within Clark County are attaining both of these standards. *See* 75 FR 45485 (August 3, 2010) (Determination of Attainment for PM_{10} for the Las Vegas Valley Nonattainment Area) and 76 FR 17343 (March 29, 2011) (Determination of Attainment for the Clark County 1997 8-Hour Ozone Nonattainment Area). We are unaware of any reliance by DAQ on the continuation of any aspect of the

[6] Section 12.1 establishes emission-based applicability thresholds based on a definition of "potential to emit" in submitted Section 0 that is generally equivalent to EPA's definition of this term in 40 CFR 51.165 and 51.166. The SIP NSR program in Section 12 (as adopted October 7, 2003), contains applicability provisions based on a definition of "total potential to emit" that is generally more expansive but allows, on the other hand, for certain engines categorized as "special mobile equipment" to be inappropriately exempt from the calculation of PTE (*see* SIP Section 12, subsection 12.1.6.1).

permit-related rules in the Clark County portion of the Nevada SIP for the purpose of continued attainment or maintenance of the NAAQS. Given all these considerations and in light of the air quality improvements in Clark County, we propose to conclude that our approval of these updated NSR regulations into the Nevada SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules satisfy most of the applicable CAA and regulatory requirements for minor NSR, PSD, and Nonattainment NSR permit programs under CAA section 110(a)(2)(C) and parts C and D of title I of the Act but also contain certain deficiencies that prevent us from proposing a full approval of the rules. Therefore, we are proposing a limited approval and limited disapproval of the submitted NSR rules. We do so based also on our finding that, while the rules do not meet all of the applicable requirements, the rules would represent an overall strengthening of the SIP by clarifying and enhancing the NSR permitting requirements for major and minor stationary sources under DAQ jurisdiction in Clark County.

We note that, pursuant to EPA's recent classification of the Clark County ozone nonattainment area as "marginal" nonattainment for the 1997 8-hour ozone standard effective June 13, 2012 (77 FR 28424, May 14, 2012), DAQ is now obligated to submit NSR SIP revisions meeting the applicable requirements of subpart 2 of part D, title I of the Act, including an offset ratio of 1.1 to 1 for NO_X and VOC (*see* CAA 182(a)(4)) no later than June 13, 2013. Likewise, with respect to stationary sources under NDEP jurisdiction (*i.e.*, major new or modified plants which generate electricity by using steam produced by the burning of fossil fuel) within portions of Clark County that are designated nonattainment for the 1997 8-hour ozone standard, NDEP is obligated to submit, no later than June 13, 2013, NSR SIP revisions meeting the applicable requirements of subpart 2 of part D, title I of the Act. Although EPA is not requiring NDEP to submit Nonattainment NSR rules for the Las Vegas PM_{10} nonattainment area (*i.e.*, hydrographic area 212) in light of the construction prohibition in NAC section 445B.22083,[7] for the 1997 8-hour ozone NAAQS the geographic boundaries of the nonattainment area within Clark County extend beyond the areas subject to the construction prohibition in NAC 445B.22083. *See* 40 CFR 81.329. NDEP is therefore obligated to address this regulatory gap in Nonattainment NSR permit requirements for new or modified major sources in these areas. In lieu of adopting and submitting a Nonattainment NSR program, NDEP may revise NAC section 445B.22083 to extend its construction prohibitions to the entire ozone nonattainment area within Clark County (as defined in 40 CFR 81.329) and submit this revised rule to EPA for approval into the SIP. These are not current program deficiencies but upcoming obligations on both NDEP's and DAQ's part that we encourage the State to address at its earliest opportunity.

III. Public Comment and Proposed Action

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of revisions to the Clark County portion of the Nevada SIP that govern the issuance of permits for stationary sources under the jurisdiction of the Clark County Department of Air Quality, including review and permitting of major sources and major modifications under parts C and D of title I of the CAA. Specifically, EPA is proposing a limited approval and limited disapproval of the new and amended Clark County regulations listed in table 1, above, as a revision to the Clark County portion of the Nevada SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current Clark County permitting regulations[8] and to set the stage for remedying deficiencies in these regulations.

If finalized as proposed, this limited approval action would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless the State of Nevada corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action. Additionally, for those deficiencies that relate to the Nonattainment NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the Clark County nonattainment areas 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in these areas six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if Nevada submits and we approve prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in our final action.

We will accept comments from the public on this proposed limited approval and limited disapproval for the next 30 days.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*, because this proposed limited approval/disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

[7] This rule prohibits the construction of new power plants or major modifications to existing power plants under State jurisdiction within the following areas: (a) Las Vegas Valley, Hydrographic Area 212; (b) El Dorado Valley, Hydrographic Area 167; (c) Ivanpah Valley, Hydrographic Areas 164 a and 164 b; and (d) The city limits of Boulder City. *See* NAC section 445B.22083. EPA approved NAC section 445B.22083 into the Nevada SIP (69 FR 54006, 54019 (September 7, 2004)), thereby resolving the regulatory gap that would otherwise currently exist in connection with NSR for PM_{10} sources under NDEP jurisdiction within the Las Vegas planning area.

[8] Final approval of the rules in table 1 would supersede all but two of the rules in the existing Nevada SIP as listed in table 2. The two SIP rules that will remain in the SIP and are unaffected by today's proposed action are Section 11 and NAC 445B.22083.

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed limited approval/disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.*, higher offset requirements) may or will flow from this proposed limited disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed limited disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This proposed 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, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this proposed action.

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

EPA interprets E.O. 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 E.O. has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed limited approval and disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–18077 Filed 7–23–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–177; RM–11665; DA 12–1008]

Radio Broadcasting Services; Randsburg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petition for rule making filed by Sound Enterprises, proposing the substitution of Channel 275A for vacant Channel 271A at Randsburg, California. The proposed channel substitution at Randsburg accommodates Petitioner's hybrid application, requesting to upgrade the facilities for Station KSSI(FM) from Channel 274A to Channel 271B1 at China Lake, California. *See* File No. BPH–20120314ACB. Channel 275A can be allotted to Randsburg consistent with the minimum distance separation requirements of the Rules with a site restriction 0.04 kilometers (0.03 miles) southeast of the community. The reference coordinates are 35–22–06 NL and 117–39–25 WL.

DATES: Comments must be filed on or before August 20, 2012, and reply comments on or before September 4, 2012.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Sound Enterprises, c/o Richard J. Hayes, Jr., Esq., Attorney at Law, 27 Water's Edge Drive, Lincolnville, Maine 04849.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 12–177, adopted June 28, 2012, and released June 29, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Randsburg, California, is amended by removing Channel 271A and by adding Channel 275A at Randsburg.

[FR Doc. 2012–17789 Filed 7–23–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552; 557

Denial of Motor Vehicle Defect Petition and Petition for a Hearing

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition.

SUMMARY: The Center for Auto Safety has petitioned NHTSA to open defect investigations on Model Year (MY) 2002–2004 Ford Escape and 2001–2004 Mazda Tribute vehicles with certain cruise control cables. The Center for Auto Safety has also petitioned for a hearing to address whether Ford Motor Company (Ford) and Mazda North American Operations (Mazda) met their obligations to notify owners and correct a defect in certain Ford Escape and Mazda Tribute vehicles. The petitions to open investigations are denied as moot and the petitions to conduct hearings are denied.

FOR FURTHER INFORMATION CONTACT: Derek Rinehardt, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–3642).

SUPPLEMENTARY INFORMATION:

I. Background

The Center for Auto Safety, in letters dated July 8, 2012 and July 13, 2012, petitioned for a Defect Order under 49 CFR Part 552 and for a Hearing on Notification and Remedy of Defects under 49 CFR Part 577. The petitions relate to Ford's recall of MY 2002–2004 Ford Escape vehicles (Recall 04V–574) and Mazda's recall of MY 2002–2004 Mazda Tribute vehicles (Recall 04V–583).

In 49 CFR Part 573 Defect and Information Reports (Part 573 Report) filed in December 2004, Ford and Mazda both informed NHTSA that the inner liner of the accelerator cable in certain Ford Escape and Mazda Tribute vehicles could migrate out of place during vehicle operation, and prevent the throttle body from returning to the idle position. Ford and Mazda said that the safety consequence of a throttle body not returning to the idle position was a progressive, and in some cases sudden increase in speed. Ford and

Mazda notified vehicle owners of the recalls (Recall 04V–574 and 04V–583) in January 2005. Thereafter, on October 6, 2005, Ford released a recall update to dealers. In that update, Ford provided supplemental instructions on how to remove the accelerator cable. The instructions indicate that damage to the speed (or cruise) control cable can result if the accelerator cable is not properly removed. Mazda, however, did not issue a recall update.

The Center for Auto Safety (CAS) asserts that Ford and Mazda failed to notify about 319,500 Ford Escape owners and 84,700 Mazda Tribute owners that their vehicles' speed (or cruise) control cables may have been damaged during the accelerator cable replacements conducted in Recall 04V–574 and Recall 04V–583. According to CAS, these vehicles were repaired prior to September 30, 2005. Related to this potential damage, CAS states that Ford and Mazda did not file Part 573 Reports with NHTSA which would have initiated a second recall. CAS adds that Ford and Mazda did not file Part 573 Reports and recall the cruise control cables. CAS claims that the cruise control cable can fail independently of being damaged in the course of repairs conducted pursuant to Recall 04V–574 and Recall 04V–583.

In its July 8 petition, CAS refers to a crash involving a MY 2002 Ford Escape which occurred in January 2012 in Payson, Arizona. The driver of the Ford Escape was killed in the crash. CAS states that the driver's vehicle had been repaired in January 2005, after Recall 04V–574 was announced but before the October 2005 recall update was released.

NHTSA has been gathering information on the Arizona crash since early 2012 when it first learned of it. NHTSA obtained the police report when it became available. In June 2012, NHTSA contacted counsel representing the driver's family to obtain more information on the crash. Independent of CAS's petition, NHTSA opened a preliminary investigation (PE 12–019) on July 17, 2012 that among other things will encompass issues raised by the Center for Auto Safety's petition.

II. CAS's Petition That NHTSA Open a Defect Investigation Is Denied as Moot

CAS requests that NHTSA open a defect investigation into MY 2002–2004 Ford Escapes and MY 2001–2004 Mazda Tributes with cruise control cables of the same design as in Recall 04V–574, Recall 04V–583, and in the Arizona vehicle. Pursuant to 49 CFR 552.3, any interested person may file a petition requesting that the Administrator commence a proceeding to decide whether to issue an order concerning the notification and remedy of a failure of a motor vehicle or item of replacement equipment to comply with an applicable motor vehicle safety standard or a defect in such vehicle or equipment that relates to motor vehicle safety. If NHTSA grants the petition, NHTSA opens an investigation.

Based on the information obtained by NHTSA prior to the filing of the CAS petition, NHTSA opened an investigation on July 17, 2012 that will, among other issues, assess the scope and remedy of Recall 04V–574 (involving certain model year 2002–2004 Ford Escape vehicles) and Recall 04V–583 (involving certain model year 2002–2004 Mazda Tribute vehicles). In view of the fact that NHTSA has opened an investigation that will examine the issues on the Ford Escape and Mazda Tribute speed control cables, including claims raised by CAS, the agency denies this portion of CAS's petition as moot.

III. CAS's Petition for a Hearing on Notification and Remedy of Defects Is Denied

CAS's petition for a hearing on notification and remedy of defects pursuant to 49 CFR Part 557 requests that NHTSA hold a hearing to determine whether Ford and Mazda reasonably met their obligations to notify owners and correct the defects at issue in Recall 04V–574 and Recall 04V–583. In determining whether to hold a hearing, the agency considers (1) The nature of the complaint; (2) the seriousness of the alleged breach of obligation to remedy; (3) the existence of similar complaints; (4) the ability of the NHTSA to resolve the problem without holding a hearing; and (5) other pertinent matters. 49 CFR 557.6.

We first consider the nature of the complaint. CAS claims that Ford did not notify owners of about 319,500 vehicles of potential damage to speed control cables caused by a faulty recall repair in Recall 04V–574. CAS claims that Mazda did not notify owners of about 84,700 vehicles of potential damage to speed control cables caused by a faulty recall repair in Recall 04V–583. CAS also claims that Ford and Mazda did not file Reports pursuant to 49 CFR Part 573 with NHTSA which would have initiated a second recall. Finally, CAS claims that Ford and Mazda did not file Part 573 Reports and recall the cruise control cable. Federal regulations require vehicle manufacturers to submit reports to NHTSA for each defect that the manufacturer or the Administrator of NHTSA determines to be related to motor vehicle safety. 49 CFR 573.6. Issues of the nature raised by CAS will be addressed in PE 12–019.

Second, we consider the seriousness of the alleged breach of obligation to remedy. If CAS's claims are true, they are serious. NHTSA will consider them in PE 12–019.

Third, we consider the existence of similar complaints. NHTSA received complaints from consumers by way of Vehicle Owner Questionnaires (VOQ's) regarding accelerator cable failure, cruise control cable failure, and/or stuck throttles. These are identified in the PE 12–019 Opening Resume in certain MY 2002–2004 Ford Escape and Mazda Tribute vehicles. NHTSA takes these complaints seriously. Considering the VOQ complaints in the context of the 2012 crash in Arizona, NHTSA opened a preliminary evaluation to investigate the safety consequence broadly including the scope and adequacy of Recall 04V–574 and Recall 04V–583. However, aside from the petition from CAS, NHTSA has not received any other complaints that Ford and Mazda failed to notify owners of vehicles that had been repaired pursuant to Recall 04V–574 or Recall 04V–583 of a faulty recall repair, file a Part 573 Report with NHTSA and initiate a second Ford Escape or Mazda Tribute recall, or file a Part 573 Report reporting the cruise control cable defect and recalling the Ford Escape and Mazda Tribute cruise control cables. Nor has NHTSA received any other requests that the Agency conduct a hearing to assess whether Ford and Mazda have met their statutory and regulatory obligations to notify owners and correct the defects at issue in Recall 04V–574 and Recall 04V–583.

Fourth, we consider the likelihood that NHTSA can resolve this alleged problem without a hearing. NHTSA believes that it can obtain the information it needs to resolve this matter by directly using its information gathering authorities with respect to Ford and Mazda, contacting Ford Escape and Mazda Tribute owners and otherwise conducting an agency investigation. We do not believe that there would be benefits to holding a hearing. In fact, the time taken to plan for and hold a hearing would detract from the investigation.

Finally, the Agency will consider other pertinent factors. The Agency has opened PE 12–019 to assess the Ford Escape and Mazda Tribute recalls and broader issues that may not be related to those recalls. We believe that an investigation is a more efficient way of obtaining the information necessary to evaluate the issues presented in CAS's petition than holding a hearing.

CAS's petition for a hearing is denied.

Authority: 49 U.S.C. 30118–30120, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 2012.

David Strickland,

Administrator.

[FR Doc. 2012–18060 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0048; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Sonoran Talussnail as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Sonoran talussnail (*Sonorella magdalenensis*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Sonoran talussnail is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: We request that we receive information on or before September 24, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After September 24, 2012, you must submit information directly to the Division of Policy and Directives Management (see **ADDRESSES** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R2–ES–2012–0048, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS– R2–ES–2012–0048; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Phoenix, AZ 85021; by telephone at 602–242–0210; or by facsimile at 602–242–2513. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Sonoran talussnail from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing threats and conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing the Sonoran talussnail is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species," within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are "essential for the conservation of the species"; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public

review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will announce our determination as to whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and status review conducted for a 12-month finding on a petition are different, as described above, a substantial 90-day finding does not mean that our status review and resulting determination will result in a warranted finding.

Petition History and Previous Federal Actions

On June 24, 2010, we received a petition dated June 24, 2010, from the Center for Biological Diversity, requesting that we list the Rosemont talussnail (*Sonorella rosemontensis*) and Sonoran talussnail (*Sonorella magdalenensis*) as endangered or threatened and that we designate critical habitat under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required by 50 CFR 424.14(a). In a December 1, 2011, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the Sonoran talussnail under section 4(b)(7) of the Act was not warranted. According to the Multi-district Litigation Stipulated Settlement Agreement (*WildEarth Guardians* v. *Salazar*, No. 1:10–mc–00377–EGS (D. D.C.); *Center for Biological Diversity* v. *Salazar*, No. 1:10–mc–00377–EGS (D.D.C.)), we are required to complete an initial finding for the Sonoran talussnail in Fiscal Year 2012, which ends September 30, 2012, as to whether the petition contains substantial information indicating that the action may be warranted. This finding addresses the petition to list the Sonoran talussnail and fulfills the requirement of the Multi-district Litigation Stipulated Settlement Agreement. The petition for the Rosemont talussnail will be addressed in a separate finding. There are no previous federal actions concerning to the Sonoran talussnail under the Act.

Species Information

Species Description and Taxonomy

The Sonoran talussnail is a relatively large pulmonate (with functional lungs), terrestrial snail with an average shell diameter of 0.74 inches (in) (19 millimeters (mm)) (Miller 1978, p. 111). The petitioner provided no further physical description of the species, nor do we have any additional species-specific information in our files. In general, snails of the *Sonorella* genus have a depressed spherical spiraling shell that is 0.47 to 1.30 in (12 to 33 mm) in diameter and lightly colored, normally containing a dark peripheral band (Bequaert and Miller 1973, p. 110). Because shells of *Sonorella* are weakly differentiated and *Sonorella* is hermaphroditic (meaning an individual has both male and female sex organs), species are primarily separated by geographic location and anatomy of male genitalia (Bequaert and Miller 1973, p. 110).

According to information in our files, the genus *Sonorella* includes 79 species (McCord 1995, p. 317). The Sonoran talussnail is in the order *Stylommatophora* and the family *Helminthoglyptidae* first described in 1890 by R.E.C. Stearns as *Helix* from specimens collected near Magdalena, Sonora, in Mexico (Bequaert and Miller 1973, pp. 121–122). Between 1915 and 1923, Pilsbry and Ferriss described seven other species and subspecies of *Sonorella* that are currently recognized as the Sonoran talussnail: *S. hinckleyi, S. h. fraternal, S. tumacacori, S. cayetanensis, S. sitiens arida, S. tumamocensis,* and *S. linearis* (Bequaert and Miller 1973, p. 122). Pilsbry (1939, p. 341) later synonymized the first four of these species with *S. s. arida,* which he raised to a species, *S. arida.* Following additional research, the three remaining species recognized by Pilsbry were synonymized with *S. magdalenensis* as a single species (Bequaert and Miller 1973, p. 122). Although a thorough systematic and phylogenetic review of the genus *Sonorella* has not been published in the literature, the Sonoran talussnail is recognized as a valid species by the scientific community (Bequaert and Miller 1973, pp. 121–123; McCord 1995. p. 320). We consider the petitioned species, *Sonorella magdalenensis,* to be a valid species based on the information in the petition and available in our files, and, therefore a listable entity under the Act.

Habitat and Life History

There is little other information available specific to the biology of the Sonoran talussnail; however, it is reasonable to conclude that the Sonoran talussnail is likely to be similar to other closely related talussnails in terms of its habitat needs and life-history traits. *Sonorella* species are generally considered rock snails, occupying rockslides and talus slopes (slopes composed of volcanic rock and limestone) (Pilsbry 1939, p. 268; Naranjo-Garcia 1988, p. 84; Pearce and Orstan 2006, p. 265). The petitioner notes that the Sonoran talussnail is found in talus or coarse broken rock slides at elevations ranging from 2,750 to 6,000 feet (839 to1830 meters) (Bequaert and Miller 1973, p. 122). Most *Sonorella* species prefer steep rock slides with sufficient interstitial space (space between rocks) that allow crawling to the proper depth for protection from summer heat (Bequaert and Miller 1973, p. 27; Hoffman 1990, p. 7; Hoffman 1995, p. 5). Occupied

sites can usually be identified by the presence of dead and bleached shells, which are typically abundant because they disintegrate slowly in arid environs (Pilsbry 1939, p. 269).

Talussnails spend considerable time in estivation (dormancy), perhaps up to 3 years at a time (Hoffman 1990, p. 7). To prepare for estivation, talussnails use mucus and calcium to attach the opening of the shell to the face of a rock to make a waterproof seal. During estivation, talussnails survive by extracting calcium carbonate from their shells, which is re-deposited when active feeding resumes (Hoffman 1990, p. 7). Weather conditions are the most important factor affecting activity of living *Sonorella*, with talussnails only active above ground during or following summer monsoon rains (Jontz *et al.* 2002a, p. 3; Weaver *et al.* 2010, p. 3). Talussnails feed primarily on fungus and decaying plant matter (Hoffman 1990, p. 7; Hoffman 1995, p. 6; AGFD 2008, p. 2). *Sonorella* species in the Santa Rita Mountains have been reported foraging on *Xanthoparmelia*, a leaf-like lichen, during and after rains (WestLand Resources 2010, pp. 26, 31).

Sonorella species mate face-to-face, and insemination is simultaneous reciprocal, meaning when two talussnails meet both are usually inseminated (Hoffman 1995, p. 6; Davison and Mordan 2007, p. 175). During or after rain events, talussnails lay a clutch of 30 to 40 eggs once or twice during summer. Fluctuations in humidity may cause large variations in rates of maturation and the life span of talussnails. The life span of land snails is dependent on their cycle of activity, although talussnails are believed to live 8 to 9 years (Hoffman 1995, p. 6). Many mountain ranges in southeastern Arizona where *Sonorella* species live are also inhabited by a snail-eating beetle (*Scaphinotus petersi*), which presumably preys upon talussnails (McCord 1995, p. 321). Talussnails are also believed to be eaten by rodents and birds, but this is probably a sporadic random occurrence (Hoffman 1990, p. 10).

Distribution and Abundance

Species in the *Sonorella* genus are found throughout most of Arizona, portions of western New Mexico and Texas, and in Sonora, Mexico, and are typically distributed across the landscape as geographically isolated populations exhibiting a high degree of endemism (organisms having narrowly distributed isolated populations) (Bequaert and Miller 1973, p. 22; McCord 1995, p. 321). The distribution and diversity of *Sonorella* species across the arid Southwest has likely been promoted by cycles of fragmentation and connection between the mountains they inhabit. It is thought that a protracted series of substantial migrations occurred during wetter periods throughout the Pleistocene Epoch (i.e., 2.5 million to 10,000 years ago), when topography also may have been more suitable for colonization by snails crawling across the landscape (Bequaert and Miller 1973, p. 22; McCord 1995, p. 321). In contrast, the drier climate and geography of the present-day Southwest does not favor dispersal of *Sonorella* species into new territories (Bequaert and Miller 1973, p. 22).

The Sonoran talussnail is one of six *Sonorella* species that has a large range relative to other members of the genus, and the Sonoran talussnail inhabits the most widely separated localities of all *Sonorella* (Bequaert and Miller 1973, p. 25). In addition to the type locality in the Sierra Magdalena in Sonora, Mexico, the petitioner notes that, in Arizona, the Sonoran talussnail has been documented in seven mountain ranges within a 200- by 30-mile (mi) (124- by 19-kilometer (km)) area primarily along the edges of the Santa Cruz Valley in Pima and Santa Cruz Counties (Bequaert and Miller 1973, p. 25). In Pima County, the species is known from the Roskruge Mountains, southern end of Tucson Mountains, northern end of Santa Rita Mountains, Cerro Colorado Mountains, and Tumamoc Hill (Bequaert and Miller 1973, p. 122). In Santa Cruz County, it is known from the San Cayetano and Tumacacori mountains (Bequaert and Miller 1973, p. 122). Bequaert and Miller (1973, p. 122) also note that the Sonoran talussnail has been found in other locations in Sonora, Mexico, as far south as the Sierra Pajaritos located 24 mi (39 km) east of the town of Ures, Sonora.

To our knowledge, there are no population numbers or trends known for the Sonoran talussnail. There are no recent survey data for all of the known range, and we have no information in our files to indicate that anyone has looked for this species throughout its range for almost 40 years. As noted by the petitioner, WestLand Resources (2010, pp. 28–29) found *Sonorella* species in 26 localities in the Santa Rita Mountains along slopes, ridge lines, and canyon bottoms in 2008 and 2009. Some of these talussnails were likely Sonoran talussnails, although this has not been verified. We have no additional information readily available in our files regarding the species' current distribution. Furthermore, the petitioner does not present, nor do we have in our files, information related to population numbers, size, or trends for the Sonoran talussnail.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the Sonoran talussnail, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

The petitioner asserts that the Sonoran talussnail is threatened by habitat loss and degradation due to mining; exotic plant invasion and control; real estate development; livestock grazing; recreation and vandalism; and illegal immigration, smuggling, and enforcement activities along the international border. Other threats asserted by the petitioner include over-collection; inadequate regulatory mechanisms; and small, isolated populations at risk of loss due to chance events and ongoing climate change.

Mining

In support of the assertion that mining activity is a threat to the Sonoran talussnail throughout its range, the petitioner explains that mining, in general, and the proposed Rosemont Copper Mine in the Santa Rita Mountains (Augusta Resource Corporation 2010, p. 10), specifically, may directly remove talussnails, degrade habitat and water quality and quantity, alter microhabitat conditions, and increase access roads and collection pressure (Center for Biological Diversity 2010, pp. 15–17). The petitioner referenced WestLand Resources (2009, p. 2 and 2010, pp. 23–32), Jones (2008, p. 1), and Bequaert and Miller (1973, p. 25) to illustrate that the Sonoran talussnail may occur in talus slopes as well as the waste rock footprint of the proposed Rosemont Copper Mine. The petitioner indicated that dust, sediment, herbicides, and windblown pollutants from mining activities, and mining-related road construction, use, and maintenance, may cause increased interstitial sedimentation and contamination of Sonoran talussnail habitat in the Santa Rita Mountains within and adjacent to the proposed Rosemont Copper Mine footprint (Service 1998, p. 5; AGFD 2003, p. 3; Fonseca 2009, p. 3; SWCA Environmental Consultants 2009, pp. 3–7).

In reference to the petitioner's claim that mining is a threat to the Sonoran talussnail, some of the information presented by the petitioner appears to be reliable. Review of the information provided by the petitioner supports that the Sonoran talussnail likely occurs in the waste rock footprint and talus slopes of the proposed Rosemont Copper Mine; however, the petitioner did not provide substantial information to illustrate that mining and mineral exploration is occurring in other parts of the species' range. However, according to U.S. Geological Survey 7.5-minute topographic maps readily available in our files, there are numerous mines and mining prospects within 2 miles of five of the known locations of Sonoran talussnail in Arizona: the Cerro Colorado Mountains, San Cayetano Mountains, Santa Rita Mountains, Tucson Mountains, and Tumacacori Mountains. These mines and mining claims are on privately owned lands or lands managed by U.S. Forest Service or Arizona State Land Department. Although we do not have information on the status of these mines, we believe their existence reveals that there is mining potential and a history of interest in areas adjacent to known locations of the Sonoran talussnail. Hard rock mining typically involves the blasting of hillsides and the crushing of rock. Threats posed to the Sonoran talussnail from such mining are supported by the information provided by the petitioner as well as other information readily available in our files (Hoffman 1990, p. 7; Jontz *et al.* 2002b, p. 1) that indicates Sonoran talussnails could be killed or their habitat rendered unsuitable from hard rock mining activities that remove talus, increase sedimentation in spaces between talus, and otherwise alter moisture conditions. These additional mines in locations that could impact more populations of the Sonoran talussnail would put the species at a high risk of extinction. Therefore, we conclude that the petition, as well as information readily available in our files, presents substantial information that this species may warrant listing due to habitat destruction from mining activities throughout most of its range.

Exotic Plants

In support of its assertion that the Sonoran talussnail is threatened by exotic plant invasion and control, the petitioner stated that *Pennisetum cilare* (buffelgrass) invades both lower slopes and steep rocky hillsides and is expanding very rapidly in areas inhabited by the species in the Roskruge Mountains, Tumamoc Hill, and Mexico (Arizona-Sonora Desert Museum 2010, p. 1). The petitioner further explained that fire carried by bufflegrass, as well as rock disturbance and herbicide application to remove bufflegrass, may degrade habitat of talussnails (Fonseca 2009, p. 3). The petitioner further referenced Garcia and Conway (2007, entire) and U.S. Forest Service (2003, entire) to illustrate that herbicides used in control of exotic plants such as buffelgrass threaten non-target species. Finally, the petitioner stated that *P. setaceum* (fountain grass) may also threaten Sonoran talussnail in the Tucson Mountains.

In reference to the petitioner's claim that exotic plant invasion and control is a threat to Sonoran talussnail, some of the information presented by the petitioner appears to be reliable. Review of this and other information readily available in our files confirms that the perennial African buffelgrass is prevalent throughout four of the seven mountain ranges in Arizona and one in Mexico with known locations of Sonoran talussnails: Cerro Colorado Mountains, Roskruge Mountains, Tucson Mountains, Tumamoc Hill, and Sierra Magdalena (Van Devender and Dimmitt 2006, pp. 5–6; Burquez-Montijo *et al.* 2002, p. 137). However, the petitioner provided no information concerning how fire carried by buffelgrass may be acting on the species. Information readily available in our files supports that fire has become an increasingly significant threat in the Sonoran Desert within the range of the Sonoran talussnail due to the widespread invasion of nonnative annual and perennial grasses (Burquez and Quinitana 1994, p. 23).

The Sonoran Desert is not adapted to high-intensity fire, yet buffelgrass is not only fire-tolerant but also fire-promoting (Halverson and Guertin 2003, p. 13). On slopes where Sonoran talussnails may be present, buffelgrass establishment is higher in the vicinity of rocks and in disturbed soils (Burquez-Montijo 2002, p. 134). The fire cycle created by conversion of slopes to buffelgrass can alter the microclimate and nutrient availability in the soil and litter layer that Sonoran talussnails rely on for food (Burquez-Montijo 2002, p. 135; Esque and Schwalbe 2002, p. 181; Williams and Baruch 2000, pp. 128–130). A study by Nekola (2002, pp. 64–65) found that increased fire cycles caused by fire management in central North American grasslands reduced the abundance and diversity of land snails and altered the microclimate and nutrient availability to snails by burning the duff or litter layer where snails feed. Even though they live in talus and not grasslands, Sonoran talussnails also rely on a litter layer to feed. In addition, surveys of a canyon occupied by *Sonorella* species in the Pinaleno Mountains of Arizona following the Nuttall complex fires in 2004 revealed hundreds of scorched talussnail shells along the canyon where burnout operations apparently reached high temperatures (Jones 2004, pers. comm.).

Information in our files regarding the ability of buffelgrass to carry fire into habitats of the Sonoran talussnail, combined with evidence that fire has killed other *Sonorella* species and resulted in decreased abundance and

diversity and altered habitat of other land snails, supports that similar negative impacts may occur, or may be occurring, to Sonoran talussnail. Therefore, information provided by the petitioner and readily available in our files presents substantial evidence that this species may warrant listing due to habitat destruction from exotic plant invasion throughout most of its range. The petitioner did not provide substantial information, nor do we have information in our files, supporting that mechanical or chemical removal of invasive plant species is a threat to the Sonoran talussnail.

Other Factors

The petitioner also states that real estate development, livestock grazing, recreation, vandalism, and activities along the international border are threats to Sonoran talussnail, but provides no substantial information to evaluate. The petitioner also states that collection is known to threaten talussnails. The petition also explains that inadequate existing regulatory mechanisms are a threat to the Sonoran talussnail based on a lack of regulation from collection laws, U.S. Forest Service regulations, and a general lack of other regulations to protect the species or its habitat in the United States or Mexico. The petitioner also asserts that *Sonorella* species are highly vulnerable to extinction due to chance events because they are found in isolated populations in small patches, and from historic range contraction that is likely to continue due to climate warming. We will further evaluate these factors, along with any other potential factors, during our status review and will report our findings in the subsequent 12-month finding.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Sonoran talussnail may be warranted. This finding is based on substantial information provided in the petition, in addition to information readily available in our files, related to possible impacts originating from mining and the invasion of exotic plants.

Because we have found that the petition presents substantial information indicating that listing the Sonoran talussnail may be warranted, we are initiating a status review to determine whether listing the Sonoran talussnail under the Act is warranted. We will evaluate all information under the five factors during the status review under section 4(b)(3)(B) of the Act. We will fully evaluate these potential threats during our status review, under the Act's requirement to review the best available scientific information when making that finding. Accordingly, we encourage the public to consider and submit information related to these and any other threats that may be operating on the Sonoran talussnail (see Request for Information).

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 12, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–17938 Filed 7–23–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0085; 4500030114]

RIN 1018–AX39

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the October 19, 2011, proposed revised designation of critical habitat for the tidewater goby (*Eucyclogobius newberryi*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for tidewater goby and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed revised designation, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published October 19, 2011 (76 FR 64996) is reopened. We will consider comments received on or before August 23, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2011–0085, or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R8–ES–2010–0085, which is the docket number for this rulemaking. Then, on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document and submit a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0085; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; by telephone 805–644–1766; or by facsimile 805–644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revised designation of critical habitat for the tidewater goby that was published in the **Federal Register** on October 19, 2011 (76 FR 64996), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the tidewater goby;

(b) The amount and distribution of tidewater goby habitat;

(c) What areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to the conservation of the species we should include in the designation and why; and

(d) What areas outside the geographical area occupied at the time of listing are essential for the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on proposed revised critical habitat for tidewater goby.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities. and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed revised rule (76 FR 64996) during the initial comment period from October 19, 2011, to December 19, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed do not meet the definition of critical habitat, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0085, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed revised rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2011–0085, or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for tidewater goby in this document. For more information on previous Federal actions concerning the tidewater goby, refer to the proposed revised designation of critical habitat published in the **Federal Register** on October 19, 2011 (76 FR 64996). For more information on the tidewater goby or its habitat, refer to the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5494); the first and second rules proposing critical habitat published in the **Federal Register** on August 3, 1999 (64 FR 42250) and November 28, 2006 (71 FR 68914), respectively; and the subsequent final critical habitat designations published in the **Federal Register** on November 20, 2000 (65 FR 69693) and January 31, 2008 (73 FR 5920), which are available at *http://www.fws.gov/ventura* or from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Additionally, more species information can be found in the Recovery Plan for the Tidewater Goby (Recovery Plan) (Service 2005), and in the Tidewater Goby 5-year review (Service 2007), which are available at *http://www.fws.gov/endangered*.

Previous Federal Actions

On April 15, 2009, Natural Resources Defense Council (NRDC) filed a lawsuit in the U.S. District Court for the Northern District of California challenging a portion of the January 31, 2008, final rule that designated 44 critical habitat units in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles Counties, California (73 FR 5920, January 31, 2008). In a consent decree dated December 11, 2009, the U.S. District Court: (1) Stated that the 44 critical habitat units should remain in effect, (2) stated that the final rule designating critical habitat was remanded in its entirety for reconsideration, and (3) directed the Service to promulgate a revised critical habitat rule that considers the entire geographic range of the tidewater goby and any currently unoccupied tidewater goby habitat. The consent decree requires that the Service submit a final revised rule to the **Federal Register** no later than November 27, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the

geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification (collectively referred to as "adverse modification") of the designated critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that may affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of tidewater goby, the benefits of critical habitat include public awareness of the presence of tidewater goby and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for tidewater goby due to protection from adverse modification of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

We are not currently considering any areas for exclusion from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the tidewater goby. The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections otherwise afforded to the tidewater goby (e.g., under the Federal listing and other Federal, State, and local regulations). The "with critical habitat" scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, "Framework for the Analysis," of the DEA (Industrial Economics Incorporated (IEc) 2012).

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the tidewater goby over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of tidewater goby conservation efforts associated with the following categories of activity: (1) Water management; (2) cattle grazing; (3) transportation (roads, highways, bridges); (4) utilities (oil and gas pipelines); (5) residential, commercial, and industrial development; and (6) natural resource management.

Baseline protections for the tidewater goby address a broad range of habitat threats within a significant portion of the proposed critical habitat area. A key consideration in the incremental analysis is that, where tidewater goby critical habitat overlaps with steelhead (*Oncorhynchus mykiss*) critical habitat, steelhead conservation measures would be sufficiently protective for tidewater goby critical habitat as well. As a result, few incremental project modification costs are anticipated in these areas. Across the designation, incremental costs primarily include costs of administrative efforts associated with new and reinitiated consultations to consider adverse modification of critical habitat for tidewater goby. In addition, some minor incremental project modification costs are forecast to result from critical habitat. This result is attributed to the following key findings: (1) Baseline protections exist for tidewater goby; (2) steelhead critical habitat overlaps with a large portion of the unoccupied units; and (3) minimal economic activity occurs on private lands in the study area.

In total, the incremental impacts to all economic activities are estimated to be $558,000 over the 20-year timeframe, or $49,300 on an annualized basis (assuming a 7 percent discount rate). Approximately 98 percent of these incremental costs result from administrative costs of considering adverse modification in section 7 consultations.

Incremental conservation efforts are estimated to be $11,500 over the 20-year timeframe or $1,090 on an annualized basis (both assuming a 7 percent discount rate). These include the costs of adding the tidewater goby to the environmental impact reports (EIR) required for projects that are being proposed in critical habitat unit MAR–5 Bolinas Lagoon and SLO–12 Oso Flaco Lake, as well as additional surveying for tidewater goby in Oso Flaco Lake.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule to incorporate or

address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Changes to Proposed Revised Critical Habitat

In this document, we are making a revision to the proposed revised critical habitat as identified and described in the proposed rule that we published in the **Federal Register** on October 19, 2011 (76 FR 64996). In the proposed rule we stated that, "We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied, because such areas are essential for the conservation of the species" (76 FR 65004). However, we did not intend to limit the proposal to only specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied. Our intent was to consider all areas that are essential for the conservation of the species and not only those that were known to be historically occupied, and we were in error when we included "that were historically occupied, but are presently unoccupied" in the proposed revised rule. In the proposed revised rule, we proposed to designate 6 units that are outside the geographical area occupied by the species at the time of listing where tidewater gobies have not been detected. These units are: SM–2 Pomponio Creek, MAR–5 Bolinas Lagoon, SLO–1 Arroyo de la Cruz, SLO–12 Oso Flaco Lake, LA–1 Arroyo Sequit, and LA–2 Zuma Canyon. These units are essential for the conservation of the tidewater goby because translocation to new locations within developing metapopulations is anticipated to enhance or accelerate the rangewide recovery effort as described in the recovery plan (Service 2005). Moreover, the recovery strategy in the recovery plan states that as subpopulations of tidewater gobies become isolated, recolonization rates decrease, local extirpations become permanent, and entire metapopulations can move incrementally toward extinction. Thus, these units are essential for the conservation of the species because they could be used to minimize the chance of local extirpations resulting in extinction of the broader metapopulations and resultant loss of their unique genetic traits either by introducing tidewater goby in these units or by the natural colonization of these units.

Required Determinations—Amended

In our October 19, 2011, proposed revised rule (76 FR 64996), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed revised rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule; it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the tidewater goby would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as: (1) Water management; (2) cattle grazing; (3) transportation (roads, highways, bridges); (4) utilities (oil and gas pipelines); (5) residential, commercial, and industrial development; and (6) natural resource management. In order to determine whether it is appropriate for us to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the tidewater goby is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the adverse

modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the tidewater goby. The analysis is based on estimated impacts associated with the proposed rulemaking as described in Chapters 4 and 5, and Appendix A, of the DEA, and evaluates the potential for economic impacts related to activity categories including development, natural resource management, transportation, utilities, water management, and recreation.

As described in Chapters 4 and 5 of the DEA, estimated incremental impacts consist primarily of administrative costs and time delays associated with section 7 consultation. The Service and the action agency are the only entities with direct compliance costs associated with this proposed critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is therefore possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the tidewater goby. The DEA indicates that the incremental impacts potentially incurred by small entities are limited to development, natural resource management, transportation, utilities, and water management activities.

Chapter 5 of the DEA discusses the potential for proposed revised critical habitat to affect development through additional costs of section 7 consultation. These costs are borne by developers and existing landowners, depending on whether developers are able to pass all or a portion of their costs back to landowners in the form of lower prices paid for undeveloped land. Of the total number of entities engaged in land subdivision and residential, commercial, industrial and institutional construction, nearly 99 percent are small entities.

Whether individual developers are affected depends on the specific characteristics of a particular land parcel as well as the availability of land within the affected region. If land is not scarce, the price of a specific parcel will likely incorporate any regulatory restrictions on that parcel. Therefore, any costs associated with conservation efforts for tidewater goby will likely be reflected in the price paid for the parcel. In this case, the costs of conservation efforts are ultimately borne by the current landowner in the form of reduced land values. Many of these landowners may be individuals or families that are not legally considered to be businesses.

If, however, land in the affected region is scarce, or the characteristics of the specific parcel are unique, the price of a parcel may not incorporate regulatory restrictions associated with that parcel. In this case, the project developer may be required to incur the additional costs associated with the section 7 consultation process. To understand the potential impacts on small entities, we conservatively assume that all of the private owners of developable lands affected by proposed revised critical habitat designation are developers.

In Chapter 5 of the DEA, we estimate that a total of 20 formal, informal, and technical assistance consultations, plus one re-initiation, may require additional effort to consider adverse modification of revised critical habitat. Assuming that each consultation is undertaken by a separate entity, we estimate that 21 developers may be affected by the designation. For purposes of this analysis, and because nearly 99 percent of developers in the study area are small, we assume that all 21 are small entities. These developers represent less than 0.1 percent of small developers in the study area.

Excluding costs borne by Federal agencies, costs per consultation range from $260 for technical assistance to $1,800 for re-initiation of a formal consultation. Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. However, assuming the average small entity has annual revenues of approximately $5.1 million, this maximum annualized impact of $1,800 represents less than 0.1 percent of annual revenues.

The consultation history for natural resource management projects suggests that these projects are generally undertaken by Federal and State agencies, or County departments. The DEA estimates incremental administrative costs for section 7 consultation on natural resource management in every County except Orange County. Only one of these entities, Del Norte County, meets the threshold for small governmental jurisdiction. Del Norte County is anticipated to incur administrative costs associated with addressing adverse modification in approximately three consultations, including one re-initiation. Even if all consultations occur in the same year, total impacts to Del Norte County will be less than 1 percent of the County's annual revenue.

The consultation history for tidewater goby includes several consultations regarding utilities and oil and gas development. In Chapter 5 of the DEA, we estimate that 24 consultations involving utility activities will occur during the 20-year period. Based on the overall percentage of all small entities in the study area (56 percent), we estimate that 14 of the 24 total entities that will be affected over the 20-year period are small entities. Excluding costs to Federal agencies, the cost per entity of addressing adverse modification in a section 7 consultation ranges from $260 for technical assistance to $880 for a formal consultation (no re-initiations are predicted for utility activities). Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. However, assuming the average small entity in this industry has annual revenues of approximately $9.3 million, this maximum annualized impact of $880 represents less than 0.01 percent of annual revenues.

Chapter 5 of the DEA also discusses the potential for water management activities to be affected by the designation. Over the 20-year period, we estimate that 125 consultations involving water management activities, including re-initiations, will occur. Based on the overall percentage of all small entities in the study area (83 percent), we estimate that 104 of the 125 total entities that will be affected over the 20-year period are small entities. Excluding costs to Federal agencies, the cost per entity of addressing adverse modification in a section 7 consultation ranges from $260 for technical assistance to $1,800 for re-initiation of a formal consultation. Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. However, assuming the average small entity in this industry has annual revenues of approximately $5.0 million, this maximum annualized impact of $1,800 represents less than 0.1 percent of annual revenues.

The DEA also concludes that none of the government entities with which we might consult on tidewater goby for transportation or recreation meet the definitions of small as defined by the Small Business Act (SBE) (IEC 2012, p. A–6); therefore, impacts to small government entities due to transportation and recreation are not anticipated. A review of the consultation history for tidewater goby suggests future section 7 consultations on livestock grazing (for example, ranching operations) are unlikely, and as a result are not anticipated to be

affected by the proposed rule (IEC 2012, p. 5–13). Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and our files. We have identified 161 small entities that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Ventura Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 12, 2012.

Michael Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–17939 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 142
Tuesday, July 24, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agency Information Collection Activities; Proposed Collection; Comment Request—Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This is an extension of a currently approved collection. Burden hours have not changed. This notice announces the Center for Nutrition Policy and Promotion's (CNPP) intention to request the Office of Management and Budget's approval of the information collection processes and instruments to be used during consumer research while testing nutrition education messages and products developed for the general public. The purpose for performing consumer research is to identify consumers' understanding of potential nutrition education messages and obtain their reaction to prototypes of nutrition education products, including Internet-based tools. The information collected will be used to refine messages and improve the usefulness of products as well as aid consumer understanding of current *Dietary Guidelines for Americans* and related materials (OMB No.: 0584–0523, Expiration Date 12/31/2012).

DATES: Written comments on this notice must be submitted on or before September 24, 2012.

ADDRESSES: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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 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 or other forms of information technology.

Comments may be sent to Colette Rihane, Director, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Colette Rihane at 703–305–3300 or via email to *DietaryGuidelines@cnpp.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the Center for Nutrition Policy and Promotion's main office located at 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Colette Rihane at 703–305–7600.

SUPPLEMENTARY INFORMATION: *Title:* Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public.

OMB Number: 0582–0523.

Expiration Date: December 31, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture (USDA) conducts consumer research to identify key issues of concern related to the understanding and use of the *Dietary Guidelines for Americans* as well as the effort and tools used to help implement the *Dietary Guidelines*. Some implementation efforts were previously known as the *MyPyramid Food Guidance System* (OMB 0584–0535 exp. July 31, 2012). The *Dietary Guidelines,* a primary source of dietary health information, are issued jointly by the Secretaries of USDA and Health and Human Services (HHS) every five years (the National Nutrition Monitoring and Related Research Act of 1990 [7 U.S.C. 5341]). The *Dietary Guidelines* serve as the cornerstone of Federal nutrition policy and form the basis for nutrition education efforts (nutrition messaging and development of consumer materials) of these agencies. The intent of the *Dietary Guidelines* is to provide advice for Americans ages two years and over about food choices that help to promote health and prevent disease. The *2010 Dietary Guidelines for Americans* includes USDA Food Pattern recommendations about what and how much to eat. To communicate the *2010 Dietary Guidelines for Americans,* USDA established a comprehensive communications initiative which includes the MyPlate icon; a Web site designed for professionals and consumers, *ChooseMyPlate.gov;* and a variety of professional and consumer resources. The MyPlate icon emphasizes the five food groups to remind Americans to eat more healthfully. The *ChooseMyPlate.gov* Web site includes resources for both consumers and professionals to promote federal dietary policy and the USDA Food Pattern recommendations to the public. This effort is critical to CNPP's mission, and it fulfills requirements of the Government Performance and Results Act of 1993 (31 U.S.C. 9701). Information collected from consumer research will be used to further develop the *Dietary Guidelines* and related communications. These may include: (1) Messages and products that help general consumers make healthier food and physical activity choices; (2) Additions and enhancements to *ChooseMyPlate.gov;* and (3) Resources for special population groups that might be identified. USDA will be assisting HHS in the upcoming Dietary Guidelines revision cycle for producing the *2015 Dietary Guidelines for Americans*. With the potential for revised or new recommendations, the possibility for developing new

messages, materials and tools also exists.

CNPP works to improve the health and well-being of Americans by developing and promoting dietary guidance that links scientific research to the nutrition needs of consumers. CNPP has among its major functions the development and coordination of nutrition policy within USDA and is involved in the investigation of techniques for effective nutrition communication. Under Subtitle D of the National Agriculture Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3175), the Secretary of Agriculture is required to develop and implement a national food and human nutrition research and extension program, including the development of techniques to assist consumers in selecting food that supplies a nutritionally adequate diet. Pursuant to 7 CFR 2.19(a)(3), the Secretary of Agriculture has delegated authority to CNPP for, among other things, developing materials to aid the public in selecting food for good nutrition; coordinating nutrition education promotion and professional education projects within the Department; and consulting with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding food consumption and dietary adequacy.

The products for these initiatives will be tested using qualitative and possibly quantitative consumer research techniques, which may include focus groups (with general consumers or with specific target groups such as low-income consumers, children, older Americans, educators, students, etc.), interviews (i.e., intercept, individual, diads, triads, usability testing, etc.), and Web-based surveys. Information collected from participants will be formative and will be used to improve the clarity, understandability, and acceptability of the resources, messages and products. Information collected will not be nationally representative, and no attempt will be made to generalize the findings to be nationally representative or statistically valid.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 57,000.

Estimated Number of Responses per Respondent: One.

Estimated Time per Response: 12.63 minutes.

Estimated Total Annual Burden on Respondents: 12,004 hours.

ESTIMATION OF BURDEN HOURS

Affected public	Survey instruments	Number of respondents	Frequency of responses	Estimate total annual responses per respondent (cxd)	Hours per response	Total burden (exf)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
Reporting Burden						
Individuals & Households ...	Focus Group Screeners	7,500.00	1.00	7,500.00	0.25	1,875.00
	Interview Screeners	7,500.00	1.00	7,500.00	0.25	1,875.00
	Focus Groups	500.00	1.00	500.00	2.00	1,000.00
	Interviews	500.00	1.00	500.00	1.00	500.00
	Web-based Collections	20,000.00	1.00	20,000.00	0.25	5,000.00
	Confidentiality Agreement ..	21,000.00	1.00	21,000.00	0.08	1,753.50
Total	.....	57,000.00	1.00	57,000.00	32.00	12,003.50

Dated: June 21, 2012.

Rajen Anand,

Executive Director, Center for Nutrition Policy and Promotion.

[FR Doc. 2012–18069 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2012 Through June 30, 2013

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals and snacks served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and snacks served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the laws and regulations governing the Child and Adult Care Food Program.

DATES: These rates are effective from July 1, 2012 through June 30, 2013.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Section Head, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, 703–305–2590.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice have the meanings ascribed to them in the Child and Adult Care Food Program regulations, 7 CFR part 226.

Background

Pursuant to sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and 7 CFR 226.4, 226.12 and 226.13 of the Program regulations, notice is hereby given of the new payment rates for institutions

participating in the Child and Adult Care Food Program (CACFP). These rates are in effect during the period, July 1, 2012 through June 30, 2013.

As provided for under the law, all rates in the CACFP must be revised annually, on July 1, to reflect changes in the Consumer Price Index (CPI), published by the Bureau of Labor Statistics of the United States Department of Labor, for the most recent 12-month period. In accordance with this mandate, the United States Department of Agriculture (USDA) last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsoring organizations of day care homes, for the period from July 1, 2011 through June 30, 2012, on July 20, 2011, at 76 FR 43254. A correction to the table of administrative reimbursement rates was published on July 26, 2011, at 76 FR 44573.

Adjusted Payments

The following national average payment factors and food service payment rates for meals and snacks are in effect from July 1, 2012 through June 30, 2013. All amounts are expressed in dollars or fractions thereof. Due to a higher cost of living, the reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico, and Guam use the figures specified for the contiguous States. These rates do not include the value of USDA foods or cash-in-lieu of USDA foods which institutions receive as additional assistance for each lunch or supper served to participants under the Program. A notice announcing the value of USDA foods and cash-in-lieu of USDA foods is published separately in the **Federal Register**.

National Average Payment Rates for Centers

Payments for breakfast served are: *Contiguous States*—paid rate—27 cents, reduced price rate—125 cents, free rate—155 cents; *Alaska*—paid rate—41 cents, reduced price rate—218 cents, free rate—248 cents; *Hawaii*—paid rate—31 cents, reduced price rate—151 cents, free rate—181 cents.

Payments for lunch or supper served are: *Contiguous States*—paid rate—27 cents, reduced price rate—246 cents, free rate—286 cents; *Alaska*—paid rate—44 cents, reduced price rate—423 cents, free rate– 463 cents; *Hawaii*—paid rate—32 cents, reduced price rate—295 cents, free rate—335 cents.

Payments for snack served are: *Contiguous States*—paid rate—7 cents, reduced price rate—39 cents, free rate—78 cents; *Alaska*—paid rate—11 cents, reduced price rate—63 cents, free rate—127 cents; *Hawaii*—paid rate—8 cents, reduced price rate—46 cents, free rate—92 cents.

Food Service Payment Rates for Day Care Homes

Payments for breakfast served are: *Contiguous States*—tier I—127 cents and tier II—46 cents; *Alaska*—tier I—203 cents and tier II—72 cents; *Hawaii*—tier I—148 cents and tier II—53 cents.

Payments for lunch or supper served are: *Contiguous States*—tier I—238 cents and tier II—144 cents; *Alaska*—tier I—386 cents and tier II—233 cents; *Hawaii*—tier I –279 cents and tier II—168 cents.

Payments for snack served are: *Contiguous States*—tier I—71 cents and tier II—19 cents; *Alaska*—tier I—115 cents and tier II—31 cents; *Hawaii*—tier I—83 cents and tier II—23 cents.

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes

Monthly administrative payments to sponsors for each sponsored day care home are: *Contiguous States*—initial 50 homes—107 dollars, next 150 homes—82 dollars, next 800 homes—64 dollars, each additional home—56 dollars; *Alaska*—initial 50 homes—174 dollars, next 150 homes—133 dollars, next 800 homes—104 dollars, each additional home—91 dollars; *Hawaii*—initial 50 homes—126 dollars, next 150 homes—96 dollars, next 800 homes—75 dollars, each additional home—66 dollars.

Payment Chart

The following chart illustrates the national average payment factors and food service payment rates for meals and snacks in effect from July 1, 2012 through June 30, 2013.

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars effective from July 1, 2012–June 30, 2013]

Centers	Breakfast	Lunch and supper [1]	Snack
CONTIGUOUS STATES			
PAID	0.27	0.27	0.07
REDUCED PRICE	1.25	2.46	0.39
FREE	1.55	2.86	0.78
ALASKA			
PAID	0.41	0.44	0.11
REDUCED PRICE	2.18	4.23	0.63
FREE	2.48	4.63	1.27
HAWAII			
PAID	0.31	0.32	0.08
REDUCED PRICE	1.51	2.95	0.46
FREE	1.81	3.35	0.92

Day care homes	Breakfast		Lunch and Supper		Snack	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
CONTIGUOUS STATES	1.27	0.46	2.38	1.44	0.71	0.19
ALASKA	2.03	0.72	3.86	2.33	1.15	0.31
HAWAII	1.48	0.53	2.79	1.68	0.83	0.23

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES

[Per home/per month rates in U.S. dollars]

	Initial 50	Next 150	Next 800	Each addl
CONTIGUOUS STATES	107	82	64	56
ALASKA	174	133	104	91
HAWAII	126	96	75	66

[1] These rates do not include the value of USDA foods or cash-in-lieu of USDA foods which institutions receive as additional assistance for each CACFP lunch or supper served to participants. A notice announcing the value of USDA foods and cash-in-lieu of USDA foods is published separately in the **Federal Register**.

The changes in the national average payment rates for centers reflect a 2.93 percent increase during the 12-month period, May 2011 to May 2012, (from 230.501 in May 2011, as previously published in the **Federal Register**, to 237.262 in May 2012) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 2.73 percent increase during the 12-month period, May 2011 to May 2012, (from 225.356 in May 2011, as previously published in the **Federal Register**, to 231.518 in May 2012) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 1.70 percent increase during the 12-month period, May 2011 to May 2012, (from 225.964 in May 2011, as previously published in the **Federal Register**, to 229.815 in May 2012) in the series for all items of the CPI for All Urban Consumers.

The total amount of payments available to each State agency for distribution to institutions participating in CACFP is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

CACFP is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866. This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)).

Dated: July 18, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–18038 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2012 Through June 30, 2013

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2013 (July 1, 2012 through June 30, 2013) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: The rate in this notice is effective July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Michelle Waters, Program Analyst, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2012 Through June 30, 2013

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 22.75 cents for the period July 1, 2012 through June 30, 2013.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the

relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index increased by 1.8 percent from 197.32 for March, April, and May of 2011, as previously published in the **Federal Register**, to 200.89 for the same three months in 2012. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2012 through June 30, 2013 will be 22.75 cents per meal. This is an increase of half of one cent from the school year 2012 (July 1, 2011 through June 30, 2012) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Dated: July 18, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–18035 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the "national average payments," the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products.

DATES: These rates are effective from July 1, 2012 through June 30, 2013.

FOR FURTHER INFORMATION CONTACT: William Wagoner, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2012 through June 30, 2013, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution which participates in the Special Milk Program is 19.25 cents. This reflects a decrease of 7.08 percent in the Producer Price Index for Fluid Milk Products from May 2011 to May 2012 (from a level of 224.7 in May 2011, as previously published in the **Federal Register** to 208.8 in May 2012).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2012 through June 30, 2013 reflect a 2.93 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2011 to May 2012 (from a level of 230.501 in May 2011 as previously published in the **Federal Register** to 237.262 in May 2012). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels—Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759 (a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Section 201 of the Healthy, Hunger-Free Kids Act of 2010—Section 201 of

the Healthy, Hunger-Free Kids Act of 2010 made significant changes to the Richard B. Russell National School Lunch Act. On April 27, 2012, the interim rule entitled, "Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010" (77 FR 25024), was published and provides eligible school food authorities (SFAs) with performance-based cash reimbursement in addition to the general and special cash assistance described above. The interim rule requires that SFAs be certified by the State agency as being in compliance with the updated meal pattern and nutrition standard requirements set forth in amendments to 7 CFR Parts 210 and 220 on January 26, 2012, in the final rule entitled "Nutrition Standards in the National School Lunch and School Breakfast Programs" (77 FR 4088). Certified SFAs are eligible to receive performance-based cash assistance for each reimbursable lunch served (an additional six cents per lunch available beginning October 1, 2012, and adjusted annually thereafter).

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2012 through June 30, 2013. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced price lunches in School Year 2010–11, the payments for meals served are: *Contiguous States*—paid rate—27 cents, free and reduced price rate—27 cents, maximum rate—35 cents; *Alaska*—paid rate—44 cents, free and reduced price rate—44 cents, maximum rate—55 cents; *Hawaii*—paid rate—32 cents, free and reduced price rate—32 cents, maximum rate—40 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2010–11, payments are: *Contiguous States*—paid rate—29 cents, free and reduced price rate—29 cents, maximum rate—35 cents; *Alaska*—paid rate—46 cents, free and reduced price rate—46 cents, maximum rate—55 cents; *Hawaii*—paid rate—34 cents, free and reduced price rate—34 cents, maximum rate—40 cents.

School food authorities certified to receive the performance-based cash assistance beginning October 1, 2012, will receive an additional 6 cents added to the above amounts as part of their section 4 payments.

Section 11 National Average Payment Factors—Contiguous States—free lunch—259 cents, reduced price lunch—219 cents; *Alaska*—free lunch—419 cents, reduced price lunch—379 cents; *Hawaii*—free lunch—303 cents, reduced price lunch—263 cents.

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—78 cents, reduced price snack—39 cents, paid snack—07 cents; *Alaska*—free snack—127 cents, reduced price snack—63 cents, paid snack—11 cents; *Hawaii*—free snack—92 cents, reduced price snack—46 cents, paid snack—08 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast—155 cents, reduced price breakfast—125 cents, paid breakfast—27 cents; *Alaska*—free breakfast—248 cents, reduced price breakfast—218 cents, paid breakfast—41 cents; *Hawaii*—free breakfast—181 cents, reduced price breakfast—151 cents, paid breakfast—31 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast—185 cents, reduced price breakfast—155 cents, paid breakfast—27 cents; *Alaska*—free breakfast—297 cents, reduced price breakfast—267 cents, paid breakfast—41 cents; *Hawaii*—free breakfast—216 cents, reduced price breakfast—186 cents, paid breakfast—31 cents.

Payment Chart

The following chart illustrates the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof]

[Effective from July 1, 2012–June 30, 2013]

National school lunch program *	Less than 60%	Less than 60% + 6 cents	60% or more	60% or more + 6 cents	Maximum rate	Maximum rate + 6 cents
Contiguous States:						
Paid	0.27	0.33	0.29	0.35	0.35	0.41
Reduced price	2.46	2.52	2.48	2.54	2.63	2.69
Free	2.86	2.92	2.88	2.94	3.03	3.09
ALASKA:						
Paid	0.44	0.50	0.46	0.52	0.55	0.61
Reduced price	4.23	4.29	4.25	4.31	4.49	4.55

SCHOOL PROGRAMS—MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES—Continued

[Expressed in dollars or fractions thereof]
[Effective from July 1, 2012–June 30, 2013]

National school lunch program *	Less than 60%	Less than 60% + 6 cents	60% or more	60% or more + 6 cents	Maximum rate	Maximum rate + 6 cents
Free	4.63	4.69	4.65	4.71	4.89	4.95
HAWAII:						
Paid	0.32	0.38	0.34	0.40	0.40	0.46
Reduced price	2.95	3.01	2.97	3.03	3.14	3.20
Free	3.35	3.41	3.37	3.43	3.54	3.60

School breakfast program	Non-severe need	Severe need
Contiguous States:		
Paid	0.27	0.27
Reduced price	1.25	1.55
Free	1.55	1.85
ALASKA:		
Paid	0.41	0.41
Reduced price	2.18	2.67
Free	2.48	2.97
HAWAII:		
Paid	0.31	0.31
Reduced price	1.51	1.86
Free	1.81	2.16

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	0.1925	N/A	N/A.
Pricing programs with free option	N/A	0.1925	Average Cost Per ½ Pint of Milk.
Nonpricing programs	0.1925	N/A	N/A.

Afterschool snacks served in afterschool care programs	
Contiguous States:	
Paid	0.07
Reduced price	0.39
Free	0.78
ALASKA:	
Paid	0.11
Reduced price	0.63
Free	1.27
HAWAII:	
Paid	0.08
Reduce price	0.46
Free	0.92

* Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 18, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–18039 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0033]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fresh Fruits and Vegetables

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, Unites States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS), are sponsoring a public meeting on August 30, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 17th Session of the Codex Committee on Fresh Fruits and Vegetables (CCFFV) of the Codex Alimentarius Commission (Codex), which will be held in Mexico City, Mexico on September 3–7, 2012. The Under Secretary for Food Safety and AMS recognize the importance of providing interested parties the opportunity to obtain background information on the 17th Session of the CCFFV and to address items on the agenda.

DATES: The public meeting is scheduled for August 30, 2012, from 10 a.m.–12:00 noon.

ADDRESSES: The public meeting will be held at USDA, South Agriculture Building, 1400 Independence Avenue SW., Room 2068, Washington, DC 20250.

Documents related to the 17th session of the CCFFV will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/.*

Dorian Lafond, U.S. Delegate to the 17th session of the CCFFV, invites U.S. interested parties to submit their comments electronically to the following email address: *dorian.lafond@usda.gov.*

Call-In Number: If you wish to participate in the public meeting for the 17th session of the CCFFV by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1–888–858–2144.

Participant code: 6208658.

For Further Information About the 17th Session of the CCFFV Contact: Dorian Lafond, Agricultural Marketing Service, Fruits and Vegetables Division, Stop 0235, Room 2086, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–0235, Telephone: (202) 690–4944, Fax:(202) 720–0016, Email: *dorian.lafond@usda.gov.*

For Further Information About the Public Meeting Contact: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250. Phone: +1 (202) 690–4042, Fax: +1 (202) 720–3157, Email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCFFV is responsible for: Elaborating worldwide standards and codes of practice as may be appropriate for fresh fruits and vegetables; consulting with the United Nations Economic Commission for Europe (UNECE) Working Party on Agricultural Quality Standards in the elaboration of worldwide standards and codes of practice with particular regard to ensuring that there is no duplication of standards or codes of practice and that they follow the same broad format; consulting, as necessary with other international organizations which are active in the area of standardization of fresh fruits and vegetables.

The Committee is hosted by Mexico.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 17th session of the CCFFV will be discussed during the public meeting:

- Matters arising from Codex and other Codex committees.
- Matters arising from other international organizations on the standardization of fresh fruits and vegetables.
- UNECE standards for fresh fruits and vegetables.
- UNECE standard for avocado.
- UNECE layout for standards on fresh fruits and vegetables.
- Draft standard for avocado (revision of Codex standard 197–1995) at step 7.
- Maturity requirements: Methods of analysis for the determination of dry matter content (section 9) (draft standard for avocado).
- Provisions concerning quality tolerances—allowances of tolerances for decay and/or internal breakdown (section 4.1) (draft standard for avocado).
- Draft provisions for uniformity rules and other size related provisions at step 7 (sections 5.1 and 6.2.4) (draft standard for avocado).
- Draft standard for pomegranate at step 7.
- Proposed draft provisions for sizing and uniformity rules at step 4 (sections 3 and 5.1)(draft standard for pomegranate).
- Proposed draft standard for golden passion fruit at step 4.
- Proposed draft standard for durian at step 4.
- Proposals for new work on Codex standards for fresh fruits and vegetables.
- Proposed layout for Codex standards for fresh fruits and vegetables.
- Revision of the terms of reference of the committee on fresh fruits and vegetables.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the August 30, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 17th session of the CCFFV, Dorian Lafond (see **ADDRESSES**). Written comments should state that they relate to activities of the 17th session of the CCFFV.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or

delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, 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.

Done at Washington, DC on: July 18, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–17958 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Central Idaho RAC will meet in Grangeville, Idaho. 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 of the meeting is for RAC Members to recommend FY 2013 Title II projects (under the one year Secure Rural Schools extension) for approval. Project sponsors are asked to attend the entire RAC meeting as there will be a Question & Answer period in place of full presentations. Meetings are always open to the public.

DATES: The meeting will be held on August 2, 2012, at 10 a.m. (PST).

ADDRESSES: The meeting will be held at the Nez Perce National Forest Supervisors Office, 104 Airport Road, Grangeville, Idaho. Written comments should be sent to Laura Smith at 104 Airport Road in Grangeville, Idaho 83530. Comments may also be sent via email to *lasmith@fs.fed.us* or via facsimile to Laura at 208–983–4099.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Designated Forest Official at 208–983–5143.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. A public forum will begin at 3:15 p.m. (PST) on the meeting day. The following business will be conducted: Comments and questions from the public to the committee. 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: July 16, 2012.

Rick Brazell,

Forest Supervisor.

[FR Doc. 2012–17981 Filed 7–23–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Submission of Conservation Efforts to Make Listings Unnecessary under the Endangered Species Act.

OMB Control Number: 0648–0466.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 3.

Average Hours per Response: Development of agreement, 2,500 hours; annual monitoring, 640 hours; annual report, 160 hours.

Burden Hours: 3,300.

Needs and Uses: This request is for extension of a currently approved information collection.

On March 28, 2003, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (Services) announced a final policy on the criteria the Services will use to evaluate conservation efforts by states and other non-Federal entities (68 FR 15100). The Services take these efforts into account when making decisions on whether to list a species as threatened or endangered under the Endangered Species Act. The efforts usually involve the development of a conservation plan or agreement, procedures for monitoring the effectiveness of the plan or agreement, and an annual report.

Affected Public: State, local or tribal government; business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 18, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17943 Filed 7–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; SURF Program Student Applicant Information

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 24, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the attention of Terrell Vanderah, NIST, 100 Bureau Drive, Stop

8520, Gaithersburg, MD 20899, tel. (301) 975 5785, or *terrell.vanderah@nist.gov*. In addition, written comments may be sent via email to *terrell.vanderah@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to extend the expiration date of this currently approved information collection.

The purpose of this collection is to gather information needed for the SURF (Summer Undergraduate Research Fellowship) Program. The information will be provided by student applicants and will be described in the Proposal Review Process and Evaluation Criteria sections of the **Federal Register** Notice for the SURF Program. The information will be used by the Program Directors and technical evaluators and is needed to determine eligible students, select students for the program using the Evaluation Criteria described in the **Federal Register** Notice, and place selected students in appropriate research projects that match their needs, interests, and academic preparation. The information includes: Student name, host institution, email address/ contact information, home address, class standing, first- and second-choice NIST laboratories they wish to apply to, academic major/minor, current overall GPA, need for housing and gender (for housing purposes only), availability dates, resume, personal statement of commitment and research interests, two letters of recommendation, academic transcripts, and ability to verify U.S. citizenship or permanent legal residency.

II. Method of Collection

The Student Application Information form will be available on the web; the collection is currently limited to paper form but can be submitted as hardcopy or scanned and submitted electronically.

III. Data

OMB Control Number: 0693–0042.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 75.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 18, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–17942 Filed 7–23–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the Panel of Judges of the Malcolm Baldrige National Quality Award will meet on Wednesday, August 29, 2012. The Panel of Judges is composed of twelve members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to review applicant consensus scores and select applicants for site visit review. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will be held on Wednesday, August 29, 2012 from 8 a.m. until 5 p.m. Eastern time. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 5, 2012, that the meeting of the Judges Panel may be closed in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meetings are likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of these data as compared to the Award criteria in order to recommend organizations that will receive site visit reviews, may be closed to the public.

Dated: July 18, 2012.

Phillip A. Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–18068 Filed 7–23–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Genome in a Bottle Consortium—Work Plan Review Workshop

AGENCY: National Institute of Standards & Technology (NIST), Commerce.

ACTION: Notice of public workshop.

SUMMARY: NIST announces the Genome in a Bottle Consortium meeting to be held on Thursday and Friday, August 16 and 17, 2012. The Genome in a Bottle Consortium is planning to develop the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls. A principal motivation for this consortium is to enable performance assessment of sequencing and science-based regulatory oversight

of clinical sequencing. The purpose of this meeting is to get broad input from stakeholders about the draft consortium work plan, broadly solicit consortium membership from interested stakeholders, and invite members to participate in work plan implementation.

DATES: The Genome in a Bottle Consortium meeting will be held on Thursday and Friday, August 16 and 17, 2012. Attendees must register by 5 p.m. Eastern time on Thursday, August 9, 2012.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899 in Room C103–C106, Building 215. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact Justin Zook by email at *jzook@nist.gov* or by phone at (301) 975–4133 or Marc Salit by email at *salit@nist.gov* or by phone at (301) 975–3646. To register, go to: *https://www-s.nist.gov/CRS/*.

SUPPLEMENTARY INFORMATION: Clinical application of ultra high throughput sequencing (UHTS) for hereditary genetic diseases and oncology is rapidly growing. At present, there are no widely accepted genomic standards or quantitative performance metrics for confidence in variant calling. These standards and quantitative performance metrics are needed to achieve the confidence in measurement results expected for sound, reproducible research and regulated applications in the clinic. On April 13, 2012, NIST convened the workshop "Genome in a Bottle" to initiate a consortium to develop the reference materials, reference methods, and reference data needed to assess confidence in human whole genome variant calls. A principal motivation for this consortium is to enable science-based regulatory oversight of clinical sequencing.

At present, we expect the consortium to have four working groups with the following responsibilities:

(1) Reference Material (RM) Selection and Design: Select appropriate cell lines for whole genome RMs and design synthetic DNA constructs that could be spiked-in to samples.

(2) Measurements for Reference Material Characterization: Design and carry out experiments to characterize the RMs using multiple sequencing methods, other methods, and validation of selected variants using orthogonal technologies.

(3) Bioinformatics, Data Integration, and Data Representation: Develop methods to analyze and integrate the data for each RM, as well as select appropriate formats to represent the data.

(4) Performance Metrics and Figures of Merit: Develop useful performance metrics and figures of merit that can be obtained through measurement of the RMs.

The products of these working groups will be a set of well-characterized whole genome and synthetic DNA RMs along with the methods (documentary standards) and reference data necessary for use of the RMs. These products will be designed to help enable translation of whole genome sequencing to regulated clinical applications.

There is no cost for participating in the consortium. No proprietary information will be shared as part of the consortium, and all research results will be in the public domain.

All visitors to the NIST site are required to pre-register to be admitted and have appropriate government-issued photo ID to gain entry to NIST. Anyone wishing to attend this meeting must register at *https://www-s.nist.gov/CRS/by* 5 p.m. Eastern time on Thursday, August 9, 2012, in order to attend.

Dated: July 18, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–18064 Filed 7–23–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ14

Takes of Marine Mammals Incidental to Specified Activities; Navy Training Conducted at the Silver Strand Training Complex, San Diego Bay

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Navy (Navy) to take marine mammals, by harassment, incidental to conducting training exercises at the Silver Strand Training Complex (SSTC) in the vicinity of San Diego Bay, California.

DATES: This authorization is effective from July 18, 2012, until July 17, 2013.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 427–8401, or Monica DeAngelis, NMFS, (562) 980–3232.

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 (Secretary) 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) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such 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."

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to,

migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

NMFS received an application on March 3, 2010, and subsequently, a revised application on September 13, 2010, from the Navy for the taking, by harassment, of marine mammals incidental to conducting training exercises at the Navy's Silver Strand Training Complex (SSTC) in the vicinity of San Diego Bay, California. On October 19, 2010, NMFS published a **Federal Register** notice (75 FR 64276) requesting comments from the public concerning the Navy's proposed training activities along with NMFS' proposed IHA. However, on March 4, 2011, three long-beaked common dolphins were found dead following the Navy's mine neutralization training exercise involving time-delayed firing devices (TDFDs) at SSTC, and were suspected to be killed by the detonation. In short, a TDFD device begins a countdown to a detonation event that cannot be stopped, for example, with a 10-min TDFD, once the detonation has been initiated, 10 minutes pass before the detonation occurs and the event cannot be cancelled during that 10 minutes. Subsequently, NMFS suspended the IHA process for SSTC and worked with the Navy to come up with more robust monitoring and mitigation measures to prevent such incidents. On July 22, 2011, the Navy submitted an addendum to its IHA application which includes additional information and additional mitigation and monitoring measures for its proposed mine neutralization training exercises using TDFDs at SSTC to ensure that the potential for injury or mortality is minimized. On March 30, 2012, NMFS published a supplemental **Federal Register** notice for the proposed IHA (77 FR 19231) with enhanced mitigation and monitoring measures for training exercises using TDFDs and additional information on marine mammal species in the vicinity of the STCC.

Since there was no change made to the proposed activities, the description of the Navy's proposed SSTC training activities is not repeated here. Please refer to the **Federal Register** notices (75 FR 64276; October 19, 2010; 77 FR 19231; March 30, 2012) for the proposed IHA and its modification.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization, and for public comment on enhanced monitoring and mitigation measures for the use of TDFDs were published on October 19, 2010 (75 FR 64276) and on March 30, 2012 (77 FR 19231). During the 30-day public comment periods, the Marine Mammal Commission (Commission) and a private citizen provided comments.

Comments from October 19, 2010, ***Federal Register*** *Notice*

Comment 1: The Commission requests NMFS to require the Navy to revise density estimates and subsequent number of takes to reflect accurately the densities presented in the references or provide a reasoned explanation for the densities that were used. The Commission specifically points out that in general, the densities for California sea lions, harbor seals, and gray whales in Table 3–1 of the IHA application are inconsistent with Table 3.9–3 of the reference (DoN 2008). In addition, the Commission points out that in the case of bottlenose dolphins, the reference (National Centers for Coastal Ocean Science 2005) does not explicitly provide density estimates for this species and should not be cited as a direct source for these estimates.

Response: NMFS believes that the Navy's density estimates and subsequent number of takes used in the IHA application accurately reflect the densities presented in the references and are appropriate, although NMFS and the Navy concur that an error was made in Table 3–1 of the IHA application regarding the sources of marine mammal densities. The Navy points out that marine mammal density data actually came from Carretta *et al.* (2000), rather than from the Southern California (SOCAL) Range Complex Environmental Impact Statement/ Overseas Environmental Impact Statement (EIS/OEIS) as stated in the IHA application. The title of the reference is "Distribution and abundance of marine mammals at San Clemente Island and surrounding offshore waters: Results from aerial and ground surveys in 1998 and 1999" (specifically from Table 5, page 22 of the document) and is coauthored by J. V. Carretta, M. S. Lowry, C. E. Stinchcomb, M. S. Lynn and R. E. Cosgrove, and was published by NMFS Southwest Fisheries Science Center (SWFSC) in La Jolla, California. The density values shown in Table 3–1 were correctly used from Carretta *et al.* (2000) although rounded to two significant digits.

Regarding pinniped density data, the Navy specifies that Carretta *et al.* (2000) represents one of the few systematic regional at-sea surveys for pinnipeds within Southern California. NMFS currently does not conduct pinniped at-sea assessments and instead relies on land based counts for its stock assessment reports, and there is no other published Southern California pinniped at-sea density information that the Navy or NMFS is aware of. Therefore, Carretta *et al.* (2000) is a considered the best available science for such data.

Regarding gray whale density data, these were modified from Carretta *el al.* (2000) during 2006 when the Navy began to prepare the SSTC EIS and subsequent IHA application by NMFS SWFSC. This is reflective of the limited nature of transitory gray whale presence within the very nearshore habitat of SSTC.

Bottlenose dolphin density information was derived from NMFS SWFSC sighting data for the coastal stock of this species. The data show estimated encounter rate in number of dolphins per kilometer (km) for distinct segments along the California coastline, including the coastal area of SSTC. The Navy used the encounter rates along the shore adjacent to SSTC and given as referenced within the IHA application that this stock is normally thought to reside within 1 km of the coast, used the NOAA values for density in km squared (0.202 individual per km x 1 km = 0.202 individual per km^2).

In addition, the Navy contacted the leading experts at NMFS SWFSC on the coastal stock of bottlenose dolphins in response to the Commission's comment, and these experts confirmed that there were no traditional NMFS DISTANCE methodology density estimates available for the coastal stock of bottlenose dolphins available from NMFS. While NMFS research continues on this stock, the primary tool is visual sighting and photographic comparison, with much data still unpublished. NMFS SWFSC confirmed that the stock, while likely of higher occurrence south of Point Conception, has a very fluid distribution from south of San Francisco to some unknown distance down the Baja peninsula. There are likely significant

variations daily, annually, and inter-annually influencing distribution along the coast that are as yet not fully understood but certainly linked to oceanographic conditions as they influence prey availability. The Navy states that based on discussion with other NMFS SWFSC experts, use of the National Centers for Coastal Ocean Science publication as a source of published values for density of the coastal stock of bottlenose dolphins was appropriate. This publication did list encounter rate (density) in a range from 0.202 to 0.311. The Navy in the SSTC IHA application selected the 0.202 value given the anticipated limited occurrence of coastal bottlenose dolphins within the small spatial extent (approximately 6.5 km of ocean-side shoreline) in which the SSTC training activities being sought for authorization occur. In addition, as pointed out by experts from the Scripps Institution of Oceanography (SIO), most of the current research on this stock is focused on coastal dolphins surveys from Point Loma north. There is no or limited recent effort near SSTC. Finally, for the coastal stock of bottlenose dolphins (and all marine mammal densities used) the Navy's modeling process assumes a constant presence and density of each stock or species specifically within the SSTC action area, when in reality as discussed at length in the IHA application and briefly above, there will be times when no marine mammals including bottlenose dolphins will be present. In conclusion, NMFS believes that given the uncertainties of dolphin distribution within SSTC, and the conservative assumptions used by the Navy's model (that dolphins are always present), the 0.202 density value is justified within the context of the SSTC IHA application, and that the other densities discussed in this response (pinniped and gray whale) are also scientifically justified.

Nevertheless, following the incident of common dolphin mortalities that resulted from the use of TDFDs during a training exercise, the Navy and NMFS reassessed the species distribution in the SSTC study area and included four additional dolphin species. These species include long-beaked common dolphins (*Delphinus capensis*), short-beaked common dolphin (*D. delphis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and Risso's dolphin (*Grampus griseus*), and have been sighted in the vicinity of the SSTC training area, but much less frequently.

Comment 2: The Commission requests NMFS require the Navy to conduct external peer review of marine mammal density estimates, the data upon which those estimates are based, and the manner in which those data are being used.

Response: As discussed in detail in the Response to Comment 1, the marine mammal density data used in the SSTC IHA application and the **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA were reviewed by NMFS Regional and Science Center experts as well as by scientists from SIO. These reviews support the reliability of the data being used in making take estimates.

Comment 3: The Commission requests that NMFS only issue the IHA contingent upon a requirement that Navy first use location-specific environmental parameters to re-estimate safety zones and then use in-situ measurements to verify, and if need be, refine the safety zones prior to or at the beginning of pile driving and removal.

Response: During processing of the Navy's IHA application, and through the formal consultation between the Navy and NMFS Southwest Regional Office (SWRO) on Essential Fish Habitat, the Navy will be required to conduct an in-situ acoustic propagation measurement and monitoring for pile driving and removal during the first training deployment of the ELCAS at the SSTC. This acoustic measurement and monitoring will provide empirical field data on ELCAS pile driving and pile removal underwater source levels, and propagation specific to environmental conditions and ELCAS training at the SSTC. These values will be used to refine the safety zones prior to or at the beginning of pile driving and removal, and to inform subsequent consultations with NMFS in an adaptive management forum. Therefore, the Navy is already required to use location-specific environmental parameters to re-estimate safety zones and then use in-situ measurements to verify, and if need be, refine the safety zones prior to or at the beginning of pile driving and removal.

Comment 4: The Commission requests that before issuing the authorization, NMFS require Navy to use consistent methods for rounding fractional animals to whole numbers to determine takes from underwater detonations and pile driving and removal, and re-estimate marine mammal takes using the same methods for all proposed activities.

Response: NMFS has reviewed the Navy's process for modeling and estimating numbers of marine mammals that could be exposed to sound from underwater explosions and pile driving related training activities at SSTC, and also discussed with the Navy the method by which the take numbers were calculated. Based on the review and discussion, NMFS believes that the Navy's modeling and calculation of marine mammal takes from underwater detonations and pile driving and removal are consistent and conservative. Specifically for the SSTC IHA application pile driving and removal calculations, the Navy elected to apply a conservative and over-predictive process of "rounding up" to the next whole number any fractional exposures to generate the largest possible exposure given variations in marine mammal densities as discussed in *Response to Comment 1*. NMFS believes that the Commission's comment is probably due to the lack of detailed description of the ELCAS take calculation in the Navy's IHA application and the **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA. A detailed description along with a calculation example is provided later in this document.

Comment 5: The Commission requested that NMFS require the Navy to monitor for at least 30 minutes before, during and at least 30 minutes after all underwater detonations and pile driving and pile removing activities.

Response: The proposed mitigation measures in the **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA already called for monitoring for marine species 30 minutes before underwater detonations, and 30 minutes after underwater detonations. Monitoring during the training event would be continuous. The only exception is for the much smaller charge weight shock wave action generator (SWAG) event (0.03 lbs) where the before and after monitoring period is 10 minutes, due to its small zones of influence (60 yards or 55 m for TTS at 23 psi in warm season and 40 yards or 37 m in cold season; 20 yards or 18 m for TTS at 182 dB re 1 μPa^2-sec in both warm and cold seasons). NMFS feels that 10 minutes is adequate given the very small charge weight, smaller zones for easy visual monitoring, and extremely unlikely injury or mortality from this kind of event.

Enhanced monitoring measures concerning detonations that involve TDFDs are discussed below.

The Navy originally proposed to monitor for 30 minutes prior to ELCAS pile driving or pile removal and monitoring through pile driving and removal activities, but not post-activity because there is little likelihood of marine species mortality or injury from pile driving and removal. However, NMFS agrees with the Commission that the Navy should conduct monitoring 30

minutes after ELCAS pile driving and removal to ensure that no marine mammals were injured or killed by these activities. NMFS believes that post pile driving and removal monitoring is warranted due to the large zones of influence for pile driving and removal and because marine mammals could be missed by visual monitors. Therefore, 30 minutes of post pile driving and removal monitoring is required in the IHA NMFS issued to the Navy, and the Navy has incorporated this requirement into its latest IHA application submitted on December 28, 2010.

Comment 6: The Commission requests NMFS require the Navy to take steps to ensure that safety zones for pile driving and removal are clear of marine mammals for at least 30 minutes before activities can be resumed after a shutdown.

Response: As it described in detail in the **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA, isopleths corresponding to 180 dB re 1 µPa from impact pile driving are 46 yards (42 m) from the source. The Navy proposes a safety zone (or mitigation zone in the Navy's IHA application) of 50 yards as a shutdown zone for marine mammal mitigation. NMFS believes that in such a small zone, visual monitoring can be easily and effectively conducted to ensure that marine mammals have cleared the area after a shutdown measure has been called. Therefore, it is unnecessary for the Navy to wait for 30 minutes before activities are resumed after a shutdown. In addition, the Navy states that imposing a 30 minute post-shutdown resumption time interval would have significant negative training impacts because there is only a small window allowed for ELCAS construction to meet training objectives.

Therefore, NMFS does not agree with the Commission, nor considers it necessary, to impose a 30-minute post-shutdown waiting time to clear marine mammals.

No safety zone would be established for pile removal since the isopleths corresponding to 180 dB re 1 µPa is at the source.

Comment 7: Pending the outcome of an exploration of options to assess the efficacy of soft-starts during pile driving and removal, the Commission requests NMFS to require Navy to make observations during all soft starts to gather the data needed to analyze and report on the effectiveness of soft-starts as a mitigation measure.

Response: The "soft start" provision associated with ELCAS pile driving is one of the mitigation measures required for this activity. Although the efficacy of soft starts has not been assessed, it is believed that by increasing the pile driving power incrementally instead of starting with full power, marine mammals that were missed during the 30-minute pre pile driving monitoring would leave the area and avoid receiving TTS or PTS. NMFS agrees with the Commission that an evaluation of efficacy is warranted. However, given the limited nature of actual pile driving, and overall low marine mammal densities and occurrence within parts of SSTC where ELCAS would be used, NMFS does not believe that mandating a soft start effectiveness analysis would be meaningful or provide enough verifiable data to make any sort of reliable, scientific conclusion based on the ELCAS pile driving. Nevertheless, NMFS will require the Navy to instruct potential ELCAS monitoring personnel to note any observations during the entire pile driving sequence, including "soft start" period, for later analysis.

Comment 8: The Commission requests NMFS to condition the authorization, if issued, to require suspension of exercises if a marine mammal is seriously injured or killed and the injury or death could be associated with those exercises, and if additional measures are unlikely to reduce the risk of additional serious injuries or deaths to a very low level, require Navy to obtain the necessary authorization for such takings under MMPA.

Response: Though NMFS largely agrees with the Commission, it should be noted that without detailed examination by an expert, it is usually not feasible to determine the cause of injury or mortality when an injured or dead marine mammal is sighted in the field. Therefore, NMFS has required in its IHA that if there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.*, instances in which it is clear that munitions explosions caused the injury or death) the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the officer in charge of the training, who will follow Navy procedures for reporting the incident to NMFS through the Navy's chain-of-command.

For any other sighting of injured or dead marine mammals in the vicinity of any of Navy's SSTC training activities utilizing underwater explosive detonations for which the cause of injury or mortality cannot be immediately determined, Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows). The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Comment 9: The Commission requests NMFS ensure that discrepancies between the Navy's application and NMFS' **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA are corrected and addressed in the authorization.

Response: During the SSTC IHA application review and process, the Navy made two updates to the original February 16, 2010, application to provide an enhanced description of training events, and reflect substantive content from discussion with NMFS. The first update was on September 1, 2010 and the second update on November 4, 2010. Both updates were integrated into the final review by NMFS when making the determination to issue the IHA. NMFS has therefore corrected and addressed all inconsistencies among different IHA application stages and NMFS' **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA.

Comments from March 30, 2012, **Federal Register** *Notice*

Comment 10: The Commission requests NMFS require the Navy to model the various proposed monitoring schemes to determine what portion of the associated buffer zone is being monitored at any given time and the probability that dolphins entering that buffer zone would be detected before they get too close to the detonation site.

Response: In the fall of 2011, the Navy funded the Center for Naval Analysis (CNA) to examine this issue. CNA was asked to: (1) Analyze the Navy's mitigation approach (estimate the probability of marine mammals getting within the explosives safety zone without being detected, for various scenarios; (2) Determine what mathematical methods are appropriate for estimating the probabilities of mammals entering the various safety zones undetected; (3) Using the mathematical methods determined above, how effective are the Navy's mitigation procedures in protecting animals; and (4) Determine what are the effects of various factors such as: size of explosive charges, footprint of impact zones, travel speeds of various marine mammals, number and location of Navy observers.

CNA validated that a geometric approach to the problem would help in

assessing the study questions outlined above, and its final conclusions on the Navy's proposed TDFD mitigations were:

- Explosive harm ranges for the charge sizes under consideration are driven by the 13 psi-ms acoustic impulse metric, corresponding to slight lung injury;
- Fuse delay and animal swim speeds strongly drive results regarding mitigation capability;
- Probability of detection of all animals (Pd):
  - For TDFD mitigation ranges out to 1,000 yards, Pd would be close to 100% for 2-boats and 5-minute delay for charge weights up to 20-lb net explosive weight (NEW);
  - For TDFD mitigation ranges of 1,400/1,500 yards, likely Pd would be > 95–99% for 3-boats and 10-minute delay for charge weights up to 20-lb NEW.
- A three-boat effort is sufficient to cover most cases.

In terms of how the CNA analysis relates to the SSTC training activities, please see Response to Comment 12.

Comment 11: The Commission requests NMFS require the Navy to (1) measure empirically the propagation characteristics of the blast (i.e., impulse, peak pressure, and sound exposure level) from the 5-, 10-, and 15- to 29-lb charges used in the proposed exercises; and (2) use that information to establish appropriately sized exclusion and buffer zones.

Response: In 2002, the Navy conducted empirical measurements of underwater detonations at San Clemente Island and at the Silver Strand Training Complex in California. During these tests, 2 lb and 15 lb NEW charges were placed at 6 and 15 feet of water and peak pressures and energies were measured for both bottom placed detonations and detonations off the bottom. A finding was that, generally, single-charge underwater detonations, empirically measured, were similar to or less than propagation model predictions. Based on SSTC modeling, many of the mitigation zones by NEW proposed in the Navy's original SSTC IHA application of February 2010 were much smaller than the zones proposed in the Navy's SSTC IHA application addendum of October 2011.

As part of agreement on monitoring measures between NMFS and the Navy, the Navy will annually monitor a subset of SSTC underwater detonations with an additional boat containing marine mammal observers comprised of Navy scientists, contract scientists, and periodically NMFS scientists. The Navy will explore the value of adding field measurements during monitoring of a future mine neutralization event after evaluating the environmental variables affecting sound propagation in the area, such as shallow depths, seasonal temperature variation, bottom sediment composition, and other factors that would affect our confidence in the data collected. Further, the Navy states that if such data can be collected within existing programmed funding for SSTC monitoring (i.e., costs) and without impacts to training, the Navy will move forward in incorporating one-time propagation measurements into its monitoring program for SSTC underwater detonations training.

Comment 12: The Commission requests NMFS require the Navy to re-estimate the sizes of the buffer zones using the average swim speed of the fastest swimming marine mammal that inhabits the areas within and in the vicinity of SSTC where TDFSs would be used and for which taking authorization is being requested. The Commission states that animals swimming faster than 3 knots could easily be at increased risk. Providing peer-reviewed papers by Lockyer and Morris (1987), Mate *et al.* (1995), Ridoux *et al.* (1997), Rohr *et al.* (1998), and Rohr and Fish (2004), the Commission points out that many marine mammals are capable of swimming much faster than 4 knots, especially during short timeframes.

Response: NMFS does not agree with the Commission's assessment that the sizes of the buffer zones be established based on average swim speed of the fastest swimming marine mammals. While the Commission quotes higher swim speeds, the behavioral context of the speeds should be considered. Just because an animal can go faster does not mean that it will. A better citation than one provided by the Commission (Rohr *et al.* 1998) is perhaps Rohr *et al.* (2006). Speeds reported are in terms of maximum for a captive long-beaked common dolphin, and for wild long-beaked common dolphin evoked by low passes from an airplane recording their reaction (Rohr *et al.* 2006). Maximum speeds are energetically expensive for any organism and usually not maintained for long. Unpublished observations of marine mammals within the SSTC boat lanes during the Navy 2011 and 2012 surveys have documented mostly small groups of slow moving, milling coastal stock of bottlenose dolphins and California sea lions. The occurrence of more pelagic species (long-beaked common dolphins, Pacific white-sided dolphins, Risso's dolphins, and short-beaked common dolphins) is predicted to be less likely and limited in duration. Navy included these species in the SSTC IHA application addendum as a conservative measure.

Further expansion of the buffer zones is not warranted because: (1) The current buffer zones already incorporate an additional precautionary factor to account for swim speeds above 3 knots; and (2) buffer zones greater than 1,000 yards for events using 2 boats, and 1,400/1,500 yards for events using 3 boats or 2 boats and 1 helicopter, cannot be monitored or supported by the Navy's exercising units.

In terms of sizes of the mitigation zones, a maximum 1,400 and 1,500 yard radius for larger charge or longer time TDFD training events are required, which is the maximum distance the Navy can confidently clear with 3 boats (or 2 boats and 1 helicopter). NMFS is satisfied that the mitigation zones proposed in the supplemental **Federal Register** notice for the proposed IHA (77 FR 19231; March 30, 2012) are justified, adequate, and protective of marine mammals. In addition to the buffer zone determination issue, there are also additional operational and training resources to consider. While larger mitigation zones increase distance from the detonation site, there must also be an ability to adequately survey a mitigation zone to ensure animals are spotted. Due to the type of small unit training being conducted at SSTC, there are limited surveillance assets available to monitor a given buffer zone during underwater detonations training. Scheduling additional observation boats and crews beyond what the Navy has proposed in the SSTC IHA application addendum involves coordination and availability of other unit(s) and will degrade overall training readiness. For instance, limited availability of boats and personnel do not allow for operation of 4 or more boats. If 4 boats were required, negative impacts to military readiness would result because Navy would be precluded from conducting events due to unavailable assets. Therefore, both NMFS and the Navy do not consider additional observation boats other than those designated a valid option during SSTC TDFD training events.

Comment 13: The Commission requests NMFS to advise the Navy that it should seek authorization for serious injury and incidental mortality in addition to taking by harassment. The Commission states that the March 2011 SSTC incident indicates that the Navy's monitoring and mitigation measures used to protect marine mammals during these exercises were based on faulty assumptions and were simply not adequate.

Response: Although it is true that the Navy's previous monitoring and mitigation measures were based on faulty assumptions and did not take TDFD into consideration, they have subsequently addressed the inadequacy and worked with NMFS to develop a series of more robust monitoring and mitigation measures to safeguard marine mammals from injury and mortality. The March 2011 SSTC incident is the only known mortality event ever documented from Navy underwater detonation training not only at SSTC, but also at all other areas in the Atlantic Ocean and Pacific Ocean where similar training has occurred over the past 30 years. Due to the low density and small zones of injury, the chance for injury and mortality is considered very low. In addition, the enhanced monitoring and mitigation measures discussed in Response to Comments above and in the supplemental **Federal Register** notice for the proposed IHA (77 FR 19231; March 30, 2012) should prevent any injury and mortality of marine mammals by underwater detonations training.

Comment 14: One private citizen wrote against bombing.

Response: Comments noted. However, this comment is irrelevant to the proposed issuance of an IHA to the Navy to take marine mammals incidental to its training exercises. Description of Marine Mammals in the Area of the Specified Activity.

Common marine mammal species occurring regularly in the vicinity of the SSTC training area include the California sea lion (*Zalophus californianus*), Pacific harbor seal (*Phoca vitulina richardsii*), California coastal stock of bottlenose dolphin (*Tursiops truncatus*), and more infrequently gray whale (*Eschrichtius robustus*). Detailed descriptions of these species are provided in the **Federal Register** notice for the proposed IHA (75 FR 64276; October 19, 2010) and are not repeated here.

In addition to these four common species, an additional four dolphin species: long-beaked common dolphin, short-beaked common dolphin, Pacific white-sided dolphin, and Risso's dolphin have been sighted in the vicinity of the SSTC training area, but much less frequently. None are listed as threatened or endangered under the Endangered Species Act (ESA). Detailed descriptions of these species are provided in the supplemental **Federal Register** notice for the proposed IHA (77 FR 19231; March 30, 2012) and are not repeated here.

Further information on all the species can also be found in the NMFS Stock Assessment Reports (SAR). The Pacific 2011 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf.*

Potential Effects on Marine Mammals and Their Habitat

Anticipated impacts resulting from the Navy's proposed SSTC training activities include disturbance from underwater detonation events and pile driving from the ELCAS events, if marine mammals are in the vicinity of these action areas.

Impacts from Anthropogenic Noise

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 re 1 µPa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

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 a prolonged period of time. NMFS current standard mitigation for preventing injury from PTS and TTS is to require shutdown or power-down of noise sources when a cetacean species is detected within the isopleths corresponding to SPL at received levels equal to or higher than 180 dB re 1 µPa (rms), or a pinniped species at 190 dB re 1 µPa (rms). Based on the best scientific information available, these SPLs are far below the threshold that could cause TTS or the onset of PTS. Certain mitigation measures proposed by the Navy, discussed below, can effectively prevent the onset of TS in marine mammals, by establishing safety zones and monitoring safety zones during the training exercise.

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 could interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, like TS, marine mammals whose acoustical sensors or environment are being masked are also 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 the proposed underwater detonation and pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by dolphin species. 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 used by the animals 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).

Masking can potentially impact marine mammals at the individual, population, community, or even ecosystem levels (instead of individual levels caused by TS). Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations in certain situations. 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 underwater explosions and pile driving, contribute to the elevated ambient noise levels and, thus intensify masking. However, single detonations are unlikely to contribute much to masking.

Since all of the underwater detonation events and ELCAS events are planned in a very shallow water situation (wave length >> water depth), where low frequency propagation is not efficient, the noise generated from these activities is predominantly in the low frequency range and is not expected to contribute significantly to increased ocean ambient noise.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995). Behavioral responses to exposure to sound and explosions can range from no observable response to panic, flight and possibly more significant responses as discussed previously (Richardson *et al.* 1995; Southall *et al.* 2007). These responses include: 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) (Reviews by Richardson *et al.* 1995; Wartzok *et al.* 2003; Cox *et al.* 2006; Nowacek *et al.* 2007; Southall *et al.* 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and 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).

However, the proposed action 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 construction noise associated with the Navy's proposed training activities are expected to affect only a small number of marine mammals on an infrequent basis.

Impacts from Underwater Detonations at Close Range

In addition to noise induced disturbances and harassment, marine mammals could be killed or injured by underwater explosions due to the impacts to air cavities, such as the lungs and bubbles in the intestines, from the shock wave (Elsayed 1997; Elsayed and Gorbunov 2007). The criterion for mortality and non-auditory injury used in MMPA take authorization is the onset of extensive lung hemorrhage and slight lung injury or ear drum rupture, respectively (see Table 3). Extensive lung hemorrhage is considered debilitating and potentially fatal as a result of air embolism or suffocation. In the Incidental Harassment Authorization application, all marine mammals within the calculated radius for 1% probability of onset of extensive lung injury (i.e., onset of mortality) were counted as lethal exposures. The range at which 1% probability of onset of extensive lung hemorrhage is expected to occur is greater than the ranges at which 50% to 100% lethality would occur from closest proximity to the charge or from presence within the bulk cavitation region. (The region of bulk cavitation is an area near the surface above the detonation point in which the reflected shock wave creates a region of cavitation within which smaller animals would not be expected to survive). Because the range for onset of extensive lung hemorrhage for smaller animals exceeds the range for bulk cavitation and all more serious injuries, all smaller animals within the region of cavitation and all animals (regardless of body mass) with more serious injuries than onset of extensive lung hemorrhage are accounted for in the lethal exposures estimate. The calculated maximum ranges for onset of extensive lung hemorrhage depend upon animal body mass, with smaller animals having the greatest potential for impact, as well as water column temperature and density.

However, due to the small detonation that would be used in the proposed SSTC training activities and the resulting small safety zones to be monitored and mitigated for marine mammals in the vicinity of the proposed action area, NMFS concluded it is unlikely that marine mammals would be killed or injured by underwater detonations.

Impact from Detonations with TDFDs

As mentioned earlier, a TDFD begins a countdown to a detonation event with a time-delaying device, and there is no mechanism to stop (abort) the pre-set explosion once the device has been set. Therefore, in the absence of any additional mitigation, the potential danger exists in the scenario that during the brief period after the exclusion zone is cleared and before the charges are detonated, marine mammals could enter the exclusion zone and approach close enough to the explosive to be injured or killed upon detonation. Nevertheless, the anticipated level of impacts to marine mammals without any mitigation and monitoring measures, which is assessed solely based on the density and distribution of the animals within the vicinity of the action, remains the same as analyzed in the original proposed IHA (75 FR 64276; October 19, 2010).

Impact Criteria and Thresholds

The effects of an at-sea explosion or pile driving on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge/pile being driven; the depth of the water column; the standoff distance between the charge/pile and the animal; and the sound propagation properties of the environment. Potential impacts can range from brief acoustic effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.* 1973; O'Keeffe and Young 1984; DoN 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sub-lethal injuries (DoN 2001). Short-term or immediate lethal injury would result from massive combined trauma to

internal organs as a direct result of proximity to the point of detonation or pile driving (DoN 2001).

This section summarizes the marine mammal impact criteria used for the subsequent modeled calculations. Several standard acoustic metrics (Urick 1983) are used to describe the thresholds for predicting potential physical impacts from underwater pressure waves:

- Total energy flux density or Sound Exposure Level (SEL). For plane waves (as assumed here), SEL is the time integral of the instantaneous intensity, where the instantaneous intensity is defined as the squared acoustic pressure divided by the characteristic impedance of sea water. Thus, SEL is the instantaneous pressure amplitude squared, summed over the duration of the signal and has dB units referenced to 1 re μPa^2-s.
- 1/3-octave SEL. This is the SEL in a 1/3-octave frequency band. A 1/3-octave band has upper and lower frequency limits with a ratio of 21:3, creating bandwidth limits of about 23 percent of center frequency.
- Positive impulse. This is the time integral of the initial positive pressure pulse of an explosion or explosive-like wave form. Standard units are Pa-s, but psi-ms also are used.
- Peak pressure. This is the maximum positive amplitude of a pressure wave, dependent on charge mass and range. Units used here are psi, but other units of pressure, such as µPa and Bar, also are used.

1. Harassment Threshold for Sequential Underwater Detonations

There may be rare occasions when sequential underwater detonations are part of a static location event. Sequential detonations are more than one detonation within a 24-hour period in a geographic location where harassment zones overlap. For sequential underwater detonations, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot.

For sequential underwater detonations, the acoustic criterion for behavioral harassment is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower sound energy levels than those that may cause TTS. The behavioral harassment threshold is based on recent guidance from NMFS (NMFS 2009a; 2009b) for the energy-based TTS threshold. The research on pure tone exposures reported in Schlundt *et al.* (2000) and Finneran and Schlundt (2004) provided the pure-tone threshold of 192 dB as the lowest TTS value. The resulting TTS threshold for explosives is 182 dB re 1 μPa^2-s in any ⅓ octave band. As reported by Schlundt *et al.* (2000) and Finneran and Schlundt (2004), instances of altered behavior in the pure tone research generally began 5 dB lower than those causing TTS. The behavioral harassment threshold is therefore derived by subtracting 5 dB from the 182 dB re 1 μPa^2-s in any ⅓ octave band threshold, resulting in a 177 dB re 1 μPa^2-s behavioral disturbance harassment threshold for multiple successive explosives (Table 3).

2. Criteria for ELCAS Pile Driving and Removal

Since 1997, NMFS has been using generic sound exposure thresholds to determine when an activity in the ocean that produces impact sound (i.e., pile driving) results in potential take of marine mammals by harassment (70 FR 1871). Current NMFS criteria (70 FR 1871) regarding exposure of marine mammals to underwater sounds is that cetaceans exposed to sound pressure levels (SPLs) of 180 dB root mean squared (dB_{rms} in units of dB re 1 µPa) or higher and pinnipeds exposed to 190 dB_{rms} or higher are considered to have been taken by Level A (i.e., injurious) harassment. Marine mammals (cetaceans and pinnipeds) exposed to impulse sounds (*e.g.*, impact pile driving) of 160 dB_{rms} but below Level A thresholds (*i.e.*, 180 or 190 dB) are considered to have been taken by Level B behavioral harassment. Marine mammals (cetaceans and pinnipeds) exposed to non-impulse noise (e.g., vibratory pile driving) at received levels of 120 dB RMS or above are considered to have been taken by Level B behavioral harassment (Table 1).

TABLE 1—EFFECTS CRITERIA FOR UNDERWATER DETONATIONS AND ELCAS PILE DRIVING/REMOVAL

Criterion	Criterion definition	Threshold
Underwater Explosive Criteria		
Mortality	Onset of severe lung injury (1% probability of mortality)	30.5 psi-ms (positive impulse)
Level A Harassment (Injury)	Slight lung injury; or	13.0 psi-ms (positive impulse)
	50% of marine mammals would experience ear drum rupture; and 30% exposed sustain PTS.	205 dB re 1 μPa^2-s (full spectrum energy)
Level B Harassment	TTS (dual criteria)	23 psi (peak pressure; explosives <2,000 lbs), or
		182 dB re 1 μPa^2-s (peak ⅓ octave band)
	(sequential detonations only)	177 dB re 1 μPa^2-s
Pile Driving/Removal Criteria		
Level A Harassment	Pinniped only: PTS caused by repeated exposure to received levels that cause TTS.	190 dB_{rms} re 1 µPa
	Cetacean only: PTS caused by repeated exposure to received levels that cause TTS.	180 dB_{rms} re 1 µPa
Level B Behavioral Harassment	Impulse noise: Behavioral modification of animals	160 dB_{rms} re 1 µPa
	Non-impulse noise: Behavioral modification of animals	190 dB_{rms} re 1 µPa

Assessing Harassment from Underwater Detonations

Underwater detonations produced during SSTC training events represent a single, known source. Chemical explosives create a bubble of expanding gases as the material burns. The bubble can oscillate underwater or, depending on charge-size and depth, be vented to the surface in which case there is no bubble-oscillation with its associated low-frequency energy. Explosions

produce very brief, broadband pulses characterized by rapid rise-time, great zero-to-peak pressures, and intense sound, sometimes described as impulse. Close to the explosion, there is a very brief, great-pressure acoustic wave-front. The impulse's rapid onset time, in addition to great peak pressure, can cause auditory impacts, although the brevity of the impulse can include less SEL than expected to cause impacts. The transient impulse gradually decays in magnitude as it broadens in duration with range from the source. The waveform transforms to approximate a low-frequency, broadband signal with a continuous sound energy distribution across the spectrum. In addition, underwater explosions are relatively brief, transitory events when compared to the existing ambient noise within the San Diego Bay and at the SSTC.

The impacts of an underwater explosion to a marine mammal are dependent upon multiple factors including the size, type, and depth of both the animal and the explosive. Depth of the water column and the distance from the charge to the animal also are determining factors as are boundary conditions that influence reflections and refraction of energy radiated from the source. The severity of physiological effects generally decreases with decreasing exposure (impulse, sound exposure level, or peak pressure) and/or increasing distance from the sound source. The same generalization is not applicable for behavioral effects, because they do not depend solely on sound exposure level. Potential impacts can range from brief acoustic effects, tactile perception, and physical discomfort to both lethal and non-lethal injuries. Disturbance of ongoing behaviors could occur as a result of non-injurious physiological responses to both the acoustic signature and shock wave from the underwater explosion. Non-lethal injury includes slight injury to internal organs and auditory system. The severity of physiological effects generally decreases with decreasing sound exposure and/or increasing distance from the sound source. Injuries to internal organs and the auditory system from shock waves and intense impulsive noise associated with explosions can be exacerbated by strong bottom-reflected pressure pulses in reverberant environments (Gaspin 1983; Ahroon *et al.* 1996). Nevertheless, the overall size of the explosives used at the SSTC is much smaller than those used during larger Fleet ship and aircraft training events.

All underwater detonations proposed for SSTC were modeled as if they will be conducted in shallow water of 24 to 72 feet, including those that would normally be conducted in very shallow water (VSW) depths of zero to 24 feet. Modeling in deeper than actual water depths causes the modeled results to be more conservative (i.e., it overestimates propagation and potential exposures) than if the underwater detonations were modeled at their actual, representative depths when water depth is less than 24 feet.

The Navy's underwater explosive effects simulation requires six major process components:

- A training event description including explosive type;
- Physical oceanographic and geoacoustic data for input into the acoustic propagation model representing seasonality of the planned operation;
- Biological data for the area including density (and multidimensional animal movement for those training events with multiple detonations);
- An acoustic propagation model suitable for the source type to predict impulse, energy, and peak pressure at ranges and depths from the source;
- The ability to collect acoustic and animal movement information to predict exposures for all animals during a training event (dosimeter record); and
- The ability for post-operation processing to evaluate the dosimeter exposure record and calculate exposure statistics for each species based on applicable thresholds.

An impact model, such as the one used for the SSTC analysis, simulates the conditions present based on location(s), source(s), and species parameters by using combinations of embedded models (Mitchell *et al.* 2008). The software package used for SSTC consists of two main parts: an underwater noise model and bioacoustic impact model (Lazauski *et al.* 1999; Lazauski and Mitchell 2006; Lazauski and Mitchell 2008).

Location-specific data characterize the physical and biological environments while exercise-specific data construct the training operations. The quantification process involves employment of modeling tools that yield numbers of exposures for each training operation.

During modeling, the exposures are logged in a time-step manner by virtual dosimeters linked to each simulated animal. After the operation simulation, the logs are compared to exposure thresholds to produce raw exposure statistics. It is important to note that dosimeters only were used to determine exposures based on energy thresholds, not impulse or peak pressure thresholds. The analysis process uses quantitative methods and identifies immediate short-term impacts of the explosions based on assumptions inherent in modeling processes, criteria and thresholds used, and input data. The estimations should be viewed with caution, keeping in mind that they do not reflect measures taken to avoid these impacts (i.e., mitigations). Ultimately, the goals of this acoustic impact model were to predict acoustic propagation, estimate exposure levels, and reliably predict impacts.

Predictive sound analysis software incorporates specific bathymetric and oceanographic data to create accurate sound field models for each source type. Oceanographic data such as the sound speed profiles, bathymetry, and seafloor properties directly affect the acoustic propagation model. Depending on location, seasonal variations, and the oceanic current flow, dynamic oceanographic attributes (*e.g.*, sound speed profile) can change dramatically with time. The sound field model is embedded in the impact model as a core feature used to analyze sound and pressure fields associated with SSTC underwater detonations.

The sound field model for SSTC detonations was the Reflection and Refraction in Multilayered Ocean/Ocean Bottoms with Shear Wave Effects (REFMS) model (version 6.03). The REFMS model calculates the combined reflected and refracted shock wave environment for underwater detonations using a single, generalized model based on linear wave propagation theory (Cagniard 1962; Britt 1986; Britt *et al.* 1991).

The model outputs include positive impulse, sound exposure level (total and in 1/3-octave bands) at specific ranges and depths of receivers (i.e., marine mammals), and peak pressure. The shock wave consists of two parts, a very rapid onset "impulsive" rise to positive peak over-pressure followed by a reflected negative under-pressure rarefaction wave. Propagation of shock waves and sound energy in the shallow-water environment is constrained by boundary conditions at the surface and seafloor.

Multiple locations (in Boat Lanes and Echo area) and charge depths were used to determine the most realistic spatial and temporal distribution of detonation types associated with each training operation for a representative year. Additionally, the effect of sound on an animal depends on many factors including:

- Properties of the acoustic source(s): source level (SL), spectrum, duration, and duty cycle;

- Sound propagation loss from source to animal, as well as, reflection and refraction;
- Received sound exposure measured using well-defined metrics;
- Specific hearing;
- Exposure duration; and
- Masking effects of background and ambient noise.

To estimate exposures sufficient to be considered injury or significantly disrupt behavior by affecting the ability of an individual animal to grow (e.g., feeding and energetics), survive (e.g., behavioral reactions leading to injury or death, such as stranding), reproduce (e.g., mating behaviors), and/or degrade habitat quality resulting in abandonment or avoidance of those areas, dosimeters were attached to the virtual animals during the simulation process. Propagation and received impulse, SEL, and peak pressure are a function of depth, as well as range, depending on the location of an animal in the simulation space.

A detailed discussion of the computational process for the modeling, which ultimately generates two outcomes—the zones of influence (ZOIs) and marine mammal exposures, is presented in the Navy's IHA application.

Severity of an effect often is related to the distance between the sound source and a marine mammal and is influenced by source characteristics (Richardson and Malme 1995). For SSTC, ZOIs were estimated for the different charge weights, charge depths, water depths, and seasons using the REFMS model as described previously. These ZOIs for SSTC underwater detonations by training event are shown in Table 2, which was updated from Table 4 in the **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA. This change is merely a correction of erroneous table values. The Navy impact modeling used the correct propagation ZOIs and effects in their marine mammal exposure estimates, so the table change does not change any effects analysis presented in the **Federal Register** notice (75 FR 64276; October 19, 2010) for the proposed IHA. One correction is changing the 23 psi table entry (for the Marine Mammal systems 29-lb NEW event) to 490 yards. Since the proposed mitigation zone is based on the maximum ZOI under the dual TTS criteria, this revision changed from the previous maximum of 470 yards to 490 yards, an addition of 20 yards. In addition, Table 2 added a column that shows the ZOIs for sub-TTS behavioral harassment.

For single detonations, the ZOIs were calculated using the range associated with the onset of TTS based on the Navy REFMS model predictions.

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Table 2. Maximum ZOIs for Underwater Detonation Events at SSTC

Activity #, Underwater Detonation Activity, NEW Charge Weight Used, And Annual Activity Amount	Season*	Maximum ZOI (yards)					
		Sub-TTS	TTS		Injury		Mortality
		177 dB re 1μPa²-sec	23 psi	182 dB re 1μPa²-sec	13.0 psi-msec	205 dB re 1μPa²-sec	30.5 psi-msec
Shock wave action generator (SWAG) (San Diego Bay- Echo sub-area; 0.033 NEW (74/yr)	Warm	n/a	60	20	0	0	0
	Cold	n/a	40	20	0	0	0
SWAG (SSTC-North and South Oceanside; 0.033 NEW (16/yr)	Warm	n/a	60	20	0	0	0
	Cold	n/a	40	20	0	0	0
Mine Countermeasures (20 lbs NEW; 29/yr)	Warm	n/a	470	300	360	80	80
	Cold	n/a	450	340	160	80	80
Floating Mine (5 lbs NEW; 53/yr)	Warm	n/a	240	160	80	40	20
	Cold	n/a	260	180	80	40	20
Dive Platoon (3.5 lb NEW sequential; 8/yr)	Warm	470	210	330	80	90	50
	Cold	560	220	370	90	90	50
Unmanned Underwater Vehicle (15 lb NEW; 4/yr)	Warm	n/a	440	280	360	80	80
	Cold	n/a	400	320	150	80	80
Marine Mammal Systems (29 lb NEW sequential; 8/yr)	Warm	740	380	420	360	140	90
	Cold	650	450	470	170	140	90
Marine Mammal Systems (29 lb NEW; 8/yr)	Warm	n/a	400	330	360	100	90
	Cold	n/a	490**	370	170	100	90
Mine Neutral (3.5 lb NEW sequential; 4/yr)	Warm	470	330	330	80	90	50
	Cold	560	360	370	90	90	50
Surf Zone Training and Evaluation (<20 lb NEW; 2/yr)	Warm	n/a	470	300	160	80	80
	Cold	n/a	450	340	160	80	80
UUV Neutral (3.6 lb NEW sequential; 4/yr)	Warm	260	400	280	80	60	50
	Cold	280	400	320	90	60	50
AMNS (3.5 lb NEW; 10/yr)	Warm	n/a	220	170	80	40	40
	Cold	n/a	230	180	80	40	40
Qual/Cert (13.8 lb NEW sequential; 8/yr)	Warm	n/a	470	330	140	100	80
	Cold	n/a	330	370	140	100	80
Qual/Cert (25.5 lb NEW; 4/yr)	Warm	470	430	330	300	90	90
	Cold	530	470	360	170	90	90
Naval Special Warfare Demolition Training (10 lb NEW; 4/yr)	Warm	n/a	360	240	160	80	40
	Cold	n/a	360	250	160	80	40
Naval Special Warfare Demolition Training (3.6 lb NEW; 4/yr)	Warm	n/a	400	280	80	60	50
	Cold	n/a	400	320	90	60	50
Naval Special Warfare SEAL Delivery Vehicle (10 lb NEW; 40/yr)	Warm	n/a	360	240	160	80	40
	Cold	n/a	360	250	160	80	40
Naval Special Warfare SEAL Delivery Vehicle (10 lb NEW; 40/yr)	Warm	n/a	360	240	160	80	40
	Cold	n/a	360	250	160	80	40

* Warm: November – April; cold: May – October.
** Although revising maximum ZOI to 490 yards from 400 yards, with only 8 detonations per year, this Maximum ZOI of 490 yards would only likely occur < 1.3% (4/311) of all annual SSTC underwater detonations.

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For Multiple Successive Explosive events (i.e., sequential detonations), the ZOI calculation was based on the range to non-TTS behavior disruption. Calculating the zones of influence in terms of total SEL, 1/3-octave bands SEL, impulse, and peak pressure for sequential (10 sec timed) and multiple controlled detonations (>30 minutes)

was slightly different than for the single detonations. For the sequential detonations, ZOI calculations considered spatial and temporal distribution of the detonations, as well as the effective accumulation of the resultant acoustic energy. To calculate the ZOI, sequential detonations were modeled such that explosion SEL were summed incoherently to predict zones while peak pressure was not.

In summary, all ZOI radii were strongly influenced by charge size and placement in the water column, and only slightly by the environmental variables.

Very Shallow Water (VSW) Underwater Detonations Live-Fire Tests ZOI Determination

Measurements of the propagated pressures during single-charge underwater detonation exercises in VSW at SSTC (and San Clemente Island) were conducted in 2002 as part of a study to evaluate existing underwater explosive propagation models for application to VSW conditions (unpublished, Naval Special Warfare Center/Anteon Corporation 2005, cited in the Navy's SSTC IHA Application). The direct measurements made in those tests provided an in-place characterization of pressure propagation for the training exercises as they are actually conducted at the SSTC. During the tests, 2 and 15 lbs charges of NEW explosives were detonated in 6 and 15 feet of water with charges laying on the bottom or two feet off the bottom at SSTC and San Clemente Island. At SSTC, swell conditions precluded detonations at the 6-foot depth. Peak-pressures (unfiltered) and energies—between 100 Hz and 41 kHz—in 1/3-octave bands of highest energies from each detonation were measured in three locations relative to the charges: (1) 5–10 feet seaward of the charge, (2) 280–540 feet seaward, and (3) at about 1,000 feet seaward. Underwater detonations of small 2 lb charges at SSTC were measured at a "near range" location within feet of the charge and at a "single far range" of 525 feet from the charge (unpublished, Naval Special Warfare Center/Anteon Corporation 2005, cited in the Navy's SSTC IHA Application 2010). In the tests, the position of single charges—on and 2 feet off the bottom—affected the propagated peak-pressures. Off-bottom charges produced consistently greater peak-pressures than on-bottom charges as measured at about 200, 500, and 1,000 feet distances. Off-bottom 15 lb charges in 15 feet of water produced between 43–67% greater peak-pressures than on-bottom charges. Greater differences were found when detonations occurred in extremely shallow depths of 6 feet at San Clemente Island (unpublished, Naval Special Warfare Center/Anteon Corporation 2005, cited in the Navy's SSTC IHA Application 2010). Generally, measurements during single-charge exercises produced empirical data that were predicted by the propagation models. At about 1,000 feet seaward, peak-pressure varied from 11–17 pounds psi at different depths, and energies between 100 Hz and 41 kHz in the 1/3-octave bands of highest energies varied from about 175–186 dB re 1 μPa^2-s at different depths. From the measurements, it was determined that the range at which the criterion for onset-TTS would be expected to occur in small odontocetes matched the range predicted by a conservative model of propagation that assumed a boundary-less medium and equal sound velocity at all depths in the range—*i.e.*, an "iso-velocity" model. Bottom and water-column conditions also influence pressure-wave propagation and dissipation of blast residues.

In comparison, predictions made by the Navy's REFMS model (see above) were found to be unstable across the distances considered under the conditions of VSW with bottom or near bottom charge placement, reflective bottom, and a non-refractive water column (*i.e.*, equal sound velocity at all depths). The source of instability in the REFMS predictions is most likely due to the nature of the VSW zone wherein the ratio of depth to range is very small—a known problem for the REFMS' predictive ray-tracing. Therefore, the determination of ZOIs within the VSW zones was based on the empirical propagation data and iso-velocity model predictions discussed above for charge-weights of 20 lbs or less of NEW explosive on the bottom and for charge-weights of 3.6 lbs or less off the bottom. For SSTC this range was determined to be a 1,200-foot (400-yard) radius out from the site of the detonation with the shoreward half of the implied circle being truncated by the shoreline and extremely shallow water immediately off shore.

Assessing ELCAS Pile Driving and Removal Impacts

Noise associated with ELCAS training includes loud impulsive sounds derived from driving piles into the soft sandy substrate of the SSTC waters to temporarily support a causeway of linked pontoons. Two hammer-based methods will be used to install/remove ELCAS piles: impact pile driving for installation and vibratory driving for removal. The impact hammer is a large metal ram attached to a crane. A vertical support holds the pile in place and the ram is dropped or forced downward. The energy is then transferred to the pile which is driven into the seabed. The ram is typically lifted by a diesel power source.

The methodology for analyzing potential impacts from ELCAS events is similar to that of analyzing explosives. The ELCAS analysis includes two steps used to calculate potential exposures:

- Estimate the zone of influence for Level A injurious and Level B behavioral exposures for both impact pile driving and vibratory pile removal using the practical spreading loss equation (CALTRANS 2009).
- Estimate the number of species exposed using species density estimates and estimated zones of influence.

The practical spreading loss equation is typically used to estimate the attenuation of underwater sound over distance. The formula for this propagation loss can be expressed as:
$TL = F * \log (D1/D2)$

Where:

TL = transmission loss (the sound pressure level at distance D1 minus the sound pressure level at distance D2 from the source, in dB_{rms} re 1 µPa)
F = attenuation constant
D1 = distance at which the targeted transmission loss occurs
D2 = distance from which the transmission loss is calculated

The attenuation constant (F) is a site-specific factor based on several conditions, including water depth, pile type, pile length, substrate type, and other factors. Measurements conducted by the California Department of Transportation (CADOT) and other consultants (Greeneridge Science) indicate that the attenuation constant (F) can vary from 5 to 30. Small-diameter steel H-type piles have been found to have high F values in the range of 20 to 30 near the pile (i.e., between 30–60 feet) (CALTRANS 2009). In the absence of empirically measured values at SSTC, NMFS and the Navy worked to set the F value for SSTC to be on the low (conservative, and more predictive) end of the small-diameter steel piles at F = 15, to indicate that the spreading loss is between the spherical (F = 20) and cylindrical (F = 10).

Actual noise source levels of ELCAS pile driving at SSTC depend on the type of hammer used, the size and material of the pile, and the substrate the piles are being driven into. Using known equipment, installation procedures, and applying certain constants derived from other west coast measured pile driving, predicted underwater sound levels from ELCAS pile driving can be calculated.

The ELCAS uses 24-inch diameter hollow steel piles, installed using a diesel impact hammer to drive the piles into the sandy on-shore and near-shore substrate at SSTC. For a dock repair project in Rodeo, California in San Francisco Bay, underwater sound pressure level (SPL) for a 24-inch steel pipe pile driven with a diesel impact hammer in less than 15 ft of water depth was measured at 189 dB_{rms} re 1 µPa from approximately 33 ft (11 yards) away. SPL for the same type and size pile also driven with a diesel impact hammer, but in greater than 36 ft of water depth, was measured to be 190 to 194 dB_{rms} during the Amoco Wharf repair project in Carquinez Straits, Martinez, California (CADOT 2009). The areas where these projects were conducted have a silty sand bottom with an underlying hard clay layer, which because of the extra effort required to drive into clay, would make these measured pile driving sound levels louder (more conservative) than they would if driving into SSTC's sandy substrate. Given the local bathymetry and smooth sloping sandy bottom at SSTC, ELCAS piles will generally be driven in water depths of 36 ft or less.

Therefore, for the purposes of the Navy's SSTC ELCAS analysis, both the Rodeo repair project (189 dB_{rms}) and the low end of the measured values of the Amoco Wharf repair projects (190 dB_{rms}) are considered to be reasonably representative of sound levels that would be expected during ELCAS pile driving at SSTC. For hollow steel piles of similar size as those proposed for the ELCAS (<24-in diameter) used in Washington State and California pile driving projects, the broadband frequency range of underwater sound was measured between 50 Hz to 10.5 kHz with highest energy at frequencies <1 to 3 kHz (CALTRANS 2009). Although frequencies over 10.5 kHz are likely present during these pile driving projects, they are generally not typically measured since field data has shown a decrease in SPL to less than 120 dB at frequencies greater than 10.5 kHz (Laughlin 2005; 2007). It is anticipated that ELCAS pile driving would generate a similar sound spectra.

For ELCAS training events, using an estimated SPL measurement of 190 dB_{rms} re 1 µPa at 11 yards as described above, the circular ZOIs surrounding a 24-inch steel diesel-driven ELCAS pile can be estimated via the practical spreading loss equation to have radii of:

- 11 yards for Level A injurious harassment for pinnipeds (190 dB_{rms});
- 46 yards for Level A injurious harassment for cetaceans (180 dB_{rms}), and
- 1,094 yards for the Level B behavioral harassment (160 dB_{rms}).

It should be noted that ELCAS pier construction starts with piles being driven near the shore and extends offshore. Near the shore, the area of influence would be a semi-circle and towards the end of the ELCAS (approximately 1,200 feet or 400 yards from the shore) would be a full circle. The above calculated area of influence conservatively assumes that all ELCAS piles are driven offshore at SSTC, producing a circular zone of influence, and discounts the limited propagation from piles driven closer to shore.

Noise levels derived from piles removed via vibratory extractor are different than those driven with an impact hammer. Steel pilings and a vibratory driver were used for pile driving at the Port of Oakland (CALTRANS 2009). Underwater SPLs during this project for a 24-inch steel pile in 36 ft of water depth at a distance of 11 yards (33 feet) from the source was field measured to be 160 dB_{rms}. The area where this project was conducted (Oakland) has a harder substrate, which because of the extra effort required to drive and remove the pile, would make these measured pile driving sound levels louder (more conservative) than they would if driving and removing into and from SSTC's sandy substrate. Conservatively using this SPL measurement for SSTC and F = 15, the ZOIs for a 24-inch steel pile removed via a vibratory extractor out to different received SPLs can be estimated via the practical spreading loss equation to be:

- < 1 yard for Level A injurious harassment for pinnipeds (190 dB_{rms});
- One (1) yard for Level A injurious harassment for cetaceans (180 dB_{rms}), and
- 5,076 yards for Level B behavioral harassment (120 dB_{rms}).

As discussed above, the calculated area of influence conservatively assumes that all ELCAS piles are driven and subsequently removed offshore at SSTC, producing a circular zone of influence.

Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the Navy's proposed SSTC training activities, NMFS worked with the Navy and developed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the underwater detonations (including detonations with TDFDs) and ELCAS pile driving/removal events.

Mitigation Measures for Underwater Detonations

(A) Mitigation and Monitoring Measures for Underwater Detonations in Very Shallow Water (VSW, water depth < 24 ft)

(1) Mitigation and Monitoring Measures for VSW Underwater Detonations Using Positive Control

1. Underwater detonations using positive control (remote firing devices) will only be conducted during daylight.
2. Easily visible anchored floats will be positioned on 700 yard radius of a roughly semi-circular zone (the shoreward half being bounded by shoreline and immediate off- shore water) around the detonation location for small explosive exercises at the SSTC. These mark the outer limits of the mitigation zone.
3. For each VSW underwater detonation event, a safety-boat with a minimum of one observer is launched 30 or more minutes prior to detonation and moves through the area around the detonation site. The task of the safety observer is to exclude humans from coming into the area and to augment a shore observer's visual search of the mitigation zone for marine mammals. The safety-boat observer is in constant radio communication with the exercise coordinator and shore observer discussed below.
4. A shore-based observer will also be deployed for VSW detonations in addition to boat based observers. The shore observer will indicate that the area is clear of marine mammals after 10 or more minutes of continuous observation with no marine mammals having been seen in the mitigation zone or moving toward it.
5. At least 10 minutes prior to the planned initiation of the detonation event- sequence, the shore observer, on an elevated on-shore position, begins a continuous visual search with binoculars of the mitigation zone. At this time, the safety-boat observer informs the shore observer if any marine mammal has been seen in the zone and, together, both search the surface within and beyond the mitigation zone for marine mammals.
6. The observers (boat and shore based) will indicate that the area is not

clear any time a marine mammal is sighted in the mitigation zone or moving toward it and, subsequently, indicate that the area is clear of marine mammals when the animal is out and moving away and no other marine mammals have been sited.

7. Initiation of the detonation sequence will only begin on final receipt of an indication from the shore observer that the area is clear of marine mammals and will be postponed on receipt of an indication from any observer that the area is not clear of marine mammals.

8. Following the detonation, visual monitoring of the mitigation zone continues for 30 minutes for the appearance of any marine mammal in the zone. Any marine mammal appearing in the area will be observed for signs of possible injury.

9. Any marine mammal observed after a VSW underwater detonation either injured or exhibiting signs of distress will be reported via operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Office, San Diego Detachment. Using Marine Mammal Stranding communication trees and contact procedures established for the Southern California Range Complex, the Navy will report these events to the Stranding Coordinator of NMFS' Southwest Regional Office. These voice or email reports will contain the date and time of the sighting, location (or if precise latitude and longitude is not currently available, then the approximate location in reference to an established SSTC beach feature), species description (if known), and indication of the animal's status.

(2) Mitigation and Monitoring Measures for VSW Underwater Detonations Using Time-Delay (TDFD Only)

1. Underwater detonations using timed delay devices will only be conducted during daylight.

2. Time-delays longer than 10 minutes will not be used. The initiation of the device will not start until the mitigation area below is clear for a full 30 minutes prior to initiation of the timer.

3. A mitigation zone will be established around each underwater detonation location as indicated in Table 3 (1,000 or 1,400 yards) based on charge weight and length of time delay used.

TABLE 3—UPDATED BUFFER ZONE RADIUS (YD) FOR TDFDS BASED ON SIZE OF CHARGE AND LENGTH OF TIME-DELAY, WITH ADDITIONAL BUFFER ADDED TO ACCOUNT FOR FASTER SWIM SPEEDS

		Time-delay					
		5 min	6 min	7 min	8 min	9 min	10 min
Charge Size (lb NEW).	5 lb	1,000 yd	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd
	10 lb	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,400 yd
	15–29 lb	1,000 yd	1,400 yd	1,400 yd	1,400 yd	1,500 yd	1,500 yd

4. VSW ranges 1,000 yds:

• For each VSW underwater detonation event with a mitigation zone of 1,000 yds, a safety boat with a minimum of one observer is launched 30 or more minutes prior to detonation and moves through the area around the detonation site at the seaward edge of the mitigation zone. The task of the boat is to exclude humans from coming into the area and to augment a shore observer's visual search of the mitigation zone for marine mammals. The safety-boat observer is in constant radio communication with the exercise coordinator and shore observer discussed below. To the best extent practical, boats will try to maintain a 10 knot search speed.

• A shore-based observer will also be deployed for VSW detonations in addition to boat based observers. At least 10 minutes prior to the planned initiation of the detonation event-sequence, the shore observer, on an elevated on-shore position, begins a continuous visual search with binoculars of the mitigation zone. At this time, the safety-boat observer informs the shore observer if any marine mammal has been seen in the zone and, together, both search the surface within and beyond the mitigation zone for marine mammals. The shore observer will indicate that the area is clear of marine mammals after 10 or more minutes of continuous observation with no marine mammals having been seen in the mitigation zone or moving toward it.

5. VSW ranges larger than 1,400 yards:

• A minimum of 2 boats will be used to survey for marine mammals at mitigation ranges larger than 1,400 yards.

• When conducting the surveys within a mitigation zone >1,400 yds, boats will position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius/human safety zone) and travel in a semi-circular pattern around the detonation location surveying both the inner (toward detonation site) and outer (away from detonation site) areas. When using 2 boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees. If using more than 2 boats, each boat will be positioned equidistant from one another (120 degrees separation for 3 boats, 90 degrees separation for 4 boats, etc.). If available, aerial visual survey support from Navy helicopters can be utilized, so long as it will not jeopardize safety of flight. Helicopters will travel in a circular pattern around the detonation location.

6. A mitigation zone will be surveyed from 30 minutes prior to the detonation and for 30 minutes after the detonation.

7. Other personnel besides boat observers can also maintain situational awareness on the presence of marine mammals within the mitigation zone to the best extent practical given dive safety considerations.

Divers placing the charges on mines will observe the immediate underwater area around a detonation site for marine mammals and report sightings to surface observers.

8. If a marine mammal is sighted within an established mitigation zone or moving towards it, underwater detonation events will be suspended until the marine mammal has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.

9. Immediately following the detonation, visual monitoring for affected marine mammals within the mitigation zone will continue for 30 minutes.

10. Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported via Navy operational chain of command to Navy

environmental representatives from U.S. Pacific Fleet, Environmental Office, San Diego Detachment. Using Marine Mammal Stranding communication trees and contact procedures established for the Southern California Range Complex, the Navy will report these events to the Stranding Coordinator of NMFS' Southwest Regional Office. These voice or email reports will contain the date and time of the sighting, location (or if precise latitude and longitude is not currently available, then the approximate location in reference to an established SSTC beach feature), species description (if known), and indication of the animal's status.

(B) Mitigation and Monitoring Measures for Underwater Detonations in Shallow Water (>24 Feet)

(1) Mitigation and Monitoring Measures for Underwater Detonations Using Positive Control (Except SWAG and Timed Detonations)

1. Underwater detonations using positive control devices will only be conducted during daylight.

2. A mitigation zone of 700 yards will be established around each underwater detonation point.

3. A minimum of two boats, including but not limited to small zodiacs and 7-m Rigid Hulled Inflatable Boats (RHIB) will be deployed. One boat will act as an observer platform, while the other boat is typically the diver support boat.

4. Two observers with binoculars on one small craft/boat will survey the detonation area and the mitigation zone for marine mammals from at least 30 minutes prior to commencement of the scheduled explosive event and until at least 30 minutes after detonation.

5. In addition to the dedicated observers, all divers and boat operators engaged in detonation events can potentially monitor the area immediately surrounding the point of detonation for marine mammals.

6. If a marine mammal is sighted within the 700 yard mitigation zone or moving towards it, underwater detonation events will be suspended until the marine mammal has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.

7. Immediately following the detonation, visual monitoring for marine mammals within the mitigation zone will continue for 30 minutes. Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported to via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Office, San Diego Detachment. Using Marine Mammal Stranding communication trees and contact procedures established for the Southern California Range Complex, the Navy will report these events to the Stranding Coordinator of NMFS' Southwest Regional Office. These voice or email reports will contain the date and time of the sighting, location (or if precise latitude and longitude is not currently available, then the approximate location in reference to an established SSTC beach feature), species description (if known), and indication of the animals status.

(2) Mitigation and Monitoring Measures for Underwater Detonations Using Time-Delay (TDFD Detonations Only)

1. Underwater detonations using timed delay devices will only be conducted during daylight.

2. Time-delays longer than 10 minutes will not be used. The initiation of the device will not start until the mitigation area below is clear for a full 30 minutes prior to initiation of the timer.

3. A mitigation zone will be established around each underwater detonation location as indicated in Table 3 based on charge weight and length of time-delay used. When conducting the surveys within a mitigation zone (either 1,000 or 1,400 yds), boats will position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location surveying both the inner (toward detonation site) and outer (away from detonation site) areas.

4. Shallow water TDFD detonations range 1,000 yds:

- A minimum of 2 boats will be used to survey for marine mammals at mitigation ranges of 1,000 yds.
- When using 2 boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees.
- Two observers in each of the boats will conduct continuous visual survey of the mitigation zone for the entire duration of a training event.
- To the best extent practical, boats will try to maintain a 10 knot search speed. This search speed was added to ensure adequate coverage of the buffer zone during observation periods. While weather conditions and sea states may require slower speeds in some instances, 10 knots is a prudent, safe, and executable speed that will allow for adequate surveillance. For a 1,000 yd radius buffer zone a boat travelling at 10 knots and 500 yds away from the detonation point would circle the detonation point 3.22 times during a 30 minute survey period. By using 2 boats, 6.44 circles around the detonation point would be completed in a 30 minute span.

5. Shallow water TDFD detonations greater than 1,400 yds:

- A minimum of 3 boats or 2 boats and 1 helicopter will be used to survey for marine mammals at mitigation ranges of 1,400 yds.
- When using 3 (or more) boats, each boat will be positioned equidistant from one another (120 degrees separation for 3 boats, 90 degrees separation for 4 boats, etc.).
- For a 1,400 yd radius mitigation zone, a 10 knot speed results in 2.3 circles for each of the three boats, or nearly 7 circles around the detonation point over a 30 minute span.
- If available, aerial visual survey support from Navy helicopters can be utilized, so long as it will not jeopardize safety of flight.
- Helicopters, if available, can be used in lieu of one of the boat requirements. Navy helicopter pilots are trained to conduct searches for relatively small objects in the water, such as a missing person. A helicopter search pattern is dictated by standard Navy protocols and accounts for multiple variables, such as the size and shape of the search area, size of the object being searched for, and local environmental conditions, among others.

6. A mitigation zone will be surveyed from 30 minutes prior to the detonation and for 30 minutes after the detonation.

7. Other personnel besides boat observers can also maintain situational awareness on the presence of marine mammals within the mitigation zone to the best extent practical given dive safety considerations.

Divers placing the charges on mines will observe the immediate underwater area around a detonation site for marine mammals and report sightings to surface observers.

8. If a marine mammal is sighted within an established mitigation zone or moving towards it, underwater detonation events will be suspended until the marine mammal has voluntarily left the area and the area is clear of marine mammals for at least 30 minutes.

9. Immediately following the detonation, visual monitoring for affected marine mammals within the mitigation zone will continue for 30 minutes.

10. Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress

will be reported via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Office, San Diego Detachment or Pearl Harbor. Using Marine Mammal Stranding protocols and communication trees established for the Southern California and Hawaii Range Complexes, the Navy will report these events to the Stranding Coordinator of NMFS' Southwest or Pacific Islands Regional Office. These voice or email reports will contain the date and time of the sighting, location (or if precise latitude and longitude is not currently available, then the approximate location in reference to an established SSTC beach feature), species description (if known), and indication of the animal's status.

(3) Mitigation and Monitoring Measures for Underwater SWAG Detonations (SWAG Only)

A modified set of mitigation measures would be implemented for SWAG detonations, which involve much smaller charges of 0.03 lbs NEW.

1. Underwater detonations using SWAG will only be conducted during daylight.

2. A mitigation zone of 60 yards will be established around each SWAG detonation site.

3. A minimum of two boats, including but not limited to small zodiacs and 7-m Rigid Hulled Inflatable Boats (RHIB) will be deployed. One boat will act as an observer platform, while the other boat is typically the diver support boat.

4. Two observers with binoculars on one small craft\boat will survey the detonation area and the mitigation zone for marine mammals from at least 10 minutes prior to commencement of the scheduled explosive event and until at least 10 minutes after detonation.

5. In addition to the dedicated observers, all divers and boat operators engaged in detonation events can potentially monitor the area immediately surrounding the point of detonation for marine mammals.

6. Divers and personnel in support boats would monitor for marine mammals out to the 60 yard mitigation zone for 10 minutes prior to any detonation.

7. After the detonation, visual monitoring for marine mammals would continue for 10 minutes. Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Office, San Diego Detachment. Using Marine Mammal Stranding communication trees and contact procedures established for the Southern California Range Complex, the Navy will report these events to the Stranding Coordinator of NMFS' Southwest Regional Office. These voice or email reports will contain the date and time of the sighting, location (or if precise latitude and longitude is not currently available, then the approximate location in reference to an established SSTC beach feature), species description (if known), and indication of the animal's status.

Mitigation for ELCAS Training at SSTC

NMFS worked with the Navy and developed the below mitigation procedures for ELCAS pile driving and removal events along the oceanside Boat Lanes at the SSTC for marine mammal species.

1. Safety Zone: A safety zone shall be established at 150 feet (50 yards) from ELCAS pile driving or removal events. This safety zone is base on the predicted range to Level A harassment (180 dB_{rms}) for cetaceans during pile driving, and is being applied conservatively to both cetaceans and pinnipeds during pile driving and removal.

2. If marine mammals are found within the 150-foot (50-yard) safety zone, pile driving or removal events shall be halted until the marine mammals have voluntarily left the mitigation zone.

3. Monitoring for marine mammals shall be conducted within the zone of influence and take place at 30 minutes before, during, and 30 minutes after pile driving and removal activities, including ramp-up periods. A minimum of one trained observer shall be placed on shore, on the ELCAS, or in a boat at the best vantage point(s) practicable to monitor for marine mammals.

4. Monitoring observer(s) shall implement shut-down/delay procedures by calling for shut-down to the hammer operator when marine mammals are sighted within the safety zone. After a shut-down/delay, pile driving or removal shall not be resumed until the marine mammal within the safety zone is confirmed to have left the area or 30 minutes have passed without seeing the animal.

5. Soft Start—ELCAS pile driving shall implement a soft start as part of normal construction procedures. The pile driver increases impact strength as resistance goes up. At first, the pile driver piston drops a few inches. As resistance goes up, the pile driver piston will drop from a higher distance thus providing more impact due to gravity. This will allow marine mammals in the project area to vacate or begin vacating the area minimizing potential harassment.

NMFS has carefully evaluated these proposed mitigation measures. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals,
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned, and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of these proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Emergency Shut-Down Related to Marine Mammal Injury and Mortality

If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy training activities (e.g., instances in which it is clear that munitions explosions caused the injury or death), the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the officer in charge of the training, who will follow Navy procedures for reporting the incident to NMFS through the Navy's chain-of-command.

Monitoring and Reporting Measures

Monitoring Measures

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present. The monitoring and reporting measures for the Navy's proposed SSTC training exercises are provided below.

The SSTC Monitoring Program, proposed by the Navy as part of its IHA application, is focused on mitigation

based monitoring and presented more fully in Appendix A of the Navy's IHA application. Main monitoring techniques include use of civilian scientists as marine mammal observers during a sub-set of SSTC underwater detonation events to validate the Navy's pre and post event mitigation effectiveness, and observe marine mammal reaction, or lack of reaction to SSTC training events. Also, as stated in the Mitigation section, the Navy is required to conduct an acoustic monitoring project during the first field deployment of the ELCAS to the SSTC.

Monitoring methods for the SSTC training exercise include:

- Marine Mammal Observers (MMO) at SSTC underwater detonations
- ELCAS underwater noise propagation monitoring project
- Leverage aerial monitoring from other Navy-funded monitoring

NMFS has reviewed the Navy's SSTC Monitoring Program and worked with the Navy and developed the following monitoring measures for SSTC training activities.

I. Marine Mammal Observer at a Sub-set of SSTC Underwater Detonations

Civilian scientists acting as MMOs shall be used to observe a sub-set of the SSTC underwater detonation events. The goal of MMOs is two-fold. One, to validate the suite of SSTC specific mitigation measures applicable to a sub-set of SSTC training events, and to observe marine mammal behavior in the vicinity of SSTC training events.

MMOs shall be field-experienced observers that are either Navy biologists or contracted marine biologists. These civilian MMOs shall be placed either alongside existing Navy SSTC operators during a sub-set of training events, or on a separate small boat viewing platform. Use of MMOs shall verify Navy mitigation efforts within the SSTC, offer an opportunity for more detailed species identification, provide an opportunity to bring animal protection awareness to Navy personnel at SSTC, and provide the opportunity for an experienced biologist to collect data on marine mammal behavior. Data collected by the MMOs is anticipated to integrate with a Navy-wide effort to assess Navy training impacts on marine mammals (DoN 2009). Events selected for MMO participation shall be an appropriate fit in terms of security, safety, logistics, and compatibility with Navy underwater detonation training.

MMOs shall collect the same data currently being collected for more elaborate offshore ship-based observations including but not limited to:

(1) location of sighting;
(2) species;
(3) number of individuals;
(4) number of calves present;
(5) duration of sighting;
(6) behavior of marine animals sighted;
(7) direction of travel;
(8) environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and
(9) when in relation to Navy training did the sighting occur [before, during or after the detonation(s)].

The MMOs will not be part of the Navy's formal reporting chain of command during their data collection efforts. Exceptions shall be made if a marine mammal is observed by the MMO within the SSTC specific mitigation zones the Navy has formally proposed to the NMFS. The MMO shall inform any Navy operator of the sighting so that appropriate action may be taken by the Navy trainees.

II. ELCAS Visual Monitoring

The Navy shall place monitoring personnel to note any observations during the entire pile driving sequence, including "soft start" period, for later analysis. This analysis could provide information regarding the effectiveness of prescribing soft start or ramp up as a mitigation measures for pile driving and removal. Information regarding species observed during pile driving and removal events (including soft start period) shall include:

(1) location of sighting;
(2) species;
(3) number of individuals;
(4) number of calves present;
(5) duration of sighting;
(6) behavior of marine animals sighted;
(7) direction of travel;
(8) environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and
(9) when in relation to Navy training did the sighting occur (before, during or after the pile driving or removal).

III. ELCAS Acoustic Monitoring

The Navy shall conduct underwater acoustic propagation monitoring during the first available ELCAS deployment at the SSTC. This acoustic monitoring would provide empirical field data on ELCAS pile driving and removal underwater source levels, and propagation specific to ELCAS training at the SSTC. These results shall be used to either confirm or refine the Navy's exposure predictions (source level, F value, exposures) described earlier.

IV. Leverage From Existing Navy-Funded Marine Mammal Research

The Navy shall report results obtained annually from the Southern California Range Complex Monitoring Plan (DoN 2009) for areas pertinent to the SSTC. In the Navy's 2011 Letter of Authorization renewal application and subsequent Year 3 Southern California Monitoring Plan (DoN 2010), a new study area for aerial visual survey was created. This area would start at the shoreline of the oceanside Boat Lanes at SSTC and extend seaward to approximately 10 nm offshore. The goal of these aerial visual surveys is to document marine mammal occurrence within a given sub-area off Southern California. Significant surface area can be covered by a survey aircraft flying at 800 to 1,000 feet for approximately five hours. The use of both airplanes and helicopters as aerial platforms will be considered for the survey area off SSTC. Both aircraft type, in particular the helicopter, provide excellent platforms for documenting marine mammal behaviors and through digital photography and digital video.

Reporting Measures

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

I. General Notification of Injured or Dead Marine Mammals

Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercises involving underwater detonations or pile driving. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

II. Final Report

The Navy shall submit a final report to the Office of Protected Resources, NMFS, no later than 90 days after the expiration of the IHA. The report shall,

at a minimum, include the following marine mammal sighting information:

(1) location of sighting;
(2) species;
(3) number of individuals;
(4) number of calves present;
(5) duration of sighting;
(6) behavior of marine animals sighted;
(7) direction of travel;
(8) environmental information associated with sighting event including Beaufort sea state, wave height, swell direction, wind direction, wind speed, glare, percentage of glare, percentage of cloud cover; and
(9) when in relation to Navy training did the sighting occur [before, during or after the detonation(s)].

In addition, the Navy shall provide the information for all of its underwater detonation events and ELCAS events under the IHA. The information shall include: (1) Total number of each type of underwater detonation events conducted at the SSTC, and (2) total number of piles driven and extracted during the ELCAS exercise.

The Navy shall submit to NMFS a draft report as described above and shall respond to NMFS comments within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

Estimated Take by Incidental Harassment

Estimated Marine Mammal Exposures From SSTC Underwater Detonations

The quantitative exposure modeling methodology estimated numbers of individuals exposed to the effects of underwater detonations exceeding the thresholds used, as if no mitigation measures were employed.

All estimated exposures are seasonal averages (mean) plus one standard deviation using ½ of the yearly training tempo to represent each season. Taking this approach was an effort to be conservative (i.e., allow for an overestimate of exposure) when estimating exposures typical of training during a single year.

Table 4 shows number of annual predicted exposures by species for all underwater detonation training within the SSTC. As stated previously, only events with sequential detonations were examined for non-TTS behavior disruption.

TABLE 4—SSTC MODELED ESTIMATES OF SPECIES EXPOSED TO UNDERWATER DETONATIONS WITHOUT IMPLEMENTATION OF MITIGATION MEASURES

Species	Annual marine mammal exposure (all sources)			
	Level B behavior (multiple successive explosive events only)	Level B TTS	Level A	Mortality
	177 dB re 1 µPa	182 dB re 1 µPa²-s/23 psi	205 dB re 1 µPa²-s/13.0 psi-ms	30.5 psi-ms
Gray Whale:				
Warm	.....	.....	.....	.....
Cold	0	0	0	0
Bottlenose Dolphin:				
Warm	30	43	0	0
Cold	40	55	0	0
California Sea Lion:				
Warm	4	4	0	0
Cold	40	51	0	0
Harbor Seal:				
Warm	0	0	0	0
Cold	0	0	0	0
Long-beaked common dolphin:				
Warm	14	21	0	0
Cold	7	10	0	0
Pacific white-sided dolphin:				
Warm	2	3	0	0
Cold	3	4	0	0
Risso's dolphin:				
Warm	3	4	0	0
Cold	11	15	0	0
Short-beaked common dolphin:				
Warm	123	177	0	0
Cold	62	86	0	0
Total Annual Exposures	453	626	0	0

In summary, for all underwater detonations, the Navy's impact model predicted that no marine mammal mortality and/or Level A harassment (injury) would occur within the proposed action area. The mitigation requirements are expected to ensure that this is the case.

For non-sequential (*i.e.*, single detonation) training events, the Navy's impact model predicted a total of 626 annual exposures that could result in Level B harassment (TTS), which include annual exposures of 98 bottlenose dolphins, 55 California sea lions, 31 long-beaked common dolphins, 7 Pacific white-sided dolphins, 19 Risso's dolphins, and 263 short-beaked common dolphins.

For sequential (Multiple Successive Explosive events) training events, the Navy's impact model predicted a total of 453 annual exposures that could result in Level B behavioral harassment, which include annual exposures of 70 bottlenose dolphins, 44 California sea lions, 21 long-beaked common dolphins, 5 Pacific white-sided dolphins, 14 Risso's dolphins, and 185 short-beaked common dolphins.

Estimated Marine Mammal Exposures From ELCAS Pile Driving and Removal

I. Pile Driving

Using the marine mammal densities presented in the Navy's IHA application, the number of animals exposed to annual Level B harassment from ELCAS pile driving can be estimated. A couple of business rules and assumptions are used in this determination:

1. Pile driving is estimated to occur 10 days per ELCAS training event, with up to four training exercises being conducted per year (40 days per year). Given likely variable training schedules, an assumption was made that approximately 20 of these 40 days would occur during the warm water season, and 20 of the 40 days would occur during the cold water season.

2. To be more conservative even to the point of over predicting likely exposures, the Navy asserts that during the calculation there can be no "fractional" exposures of marine mammals on a daily basis, and all exposure values are rounded up during the calculation.

To estimate the potential ELCAS pile driving exposure, the following expression is used:

Annual exposure = ZOI × warm season marine mammal density × warm season pile driving days + ZOI × cold season marine mammal density × cold season pile driving days, with ZOI = $\pi \times R^2$, where R is the radius of the ZOI.

An example showing the take calculation for bottlenose dolphins, with the conservative "daily rounding up" business rule (#2 above), is shown below:

Daily exposure = $\pi \times 0.999^2 \times 0.202 + \pi \times 0.999^2 \times 0.202 = 0.6 + 0.6$.

When rounding up the daily exposure 0.6 dolphin to 1 dolphin; the annual exposure from warm season pile driving days (20 days) and cold season pile driving days (20 days) is:

Annual exposure = $1 \times 20 + 1 \times 20 = 40$

Based on the assessment using the methodology discussed previously, applying the business rules and limitations described here, and without consideration of mitigation measures. the take estimate is that ELCAS pile driving is predicted to result in no Level A Harassments to any marine mammal (received SPL of 190 dB_{rms} for pinnipeds and 180 dB_{rms} re 1 µPa for cetacean, respectively) but 40 bottlenose dolphins, 20 California sea lions, and 80 short-beaked common dolphins by Level B behavioral harassment (Table 5).

II. Pile Removal

The same approach is applied for take estimation from ELCAS pile removal.

To estimate the potential ELCAS pile removal exposure, the following expression is used:

Annual exposure = ZOI × warm season marine mammal density × warm season pile removal days + ZOI × cold season marine mammal density × cold season pile removal days, with ZOI = $\pi \times R^2$, where R is the radius of the ZOI.

An example showing the take calculation for bottlenose dolphins, with the conservative "daily rounding up" business rule for pile removal, is shown below:

Daily exposure = $\pi \times 4.64^2 \times 0.202 + \pi \times 4.64^2 \times 0.202 = 13.7 + 13.7$.

When rounding up the daily exposure 13.7 dolphins to 14 dolphins; the annual exposure from warm season pile removal days (6 days) and cold season pile removal days (6 days) is:

Annual exposure = $14 \times 6 + 14 \times 6 = 168$

Based on the assessment using the methodology discussed previously, applying the business rules and limitations described here, and without consideration of mitigation measures, the take estimate is that ELCAS pile removal is predicted to result in no Level A Harassments to any marine mammal (received SPL of 190 dB_{rms} for pinnipeds and 180 dB_{rms} re 1 µPa for cetacean, respectively) but in Level B behavioral harassment of 168 bottlenose dolphins, 102 California sea lions, 12 harbor seals, 6 gray whales, 54 long-beaked common dolphins, 12 Pacific white-sided dolphins, 30 Risso's dolphins, and 462 short-beaked common dolphins (Table 5).

TABLE 5—EXPOSURE ESTIMATES FROM ELCAS PILE DRIVING AND REMOVAL PRIOR TO IMPLEMENTATION OF MITIGATION MEASURES

Species	Annual Marine Mammal Exposure (All Sources)			
	Level B Behavior (Non-Impulse)	Level B Behavior (Impulse)	Level A (Cetacean)	Level A (Pinniped) 120 dB_{rms} re 1 µPa
Gray Whale:				
Installation	N/A	0	0	0
Removal	6	N/A	0	0
Bottlenose Dolphin:				
Installation	N/A	40	0	0
Removal	168	N/A	0	0
California Sea Lion:				
Installation	N/A	20	0	0
Removal	102	N/A	0	0
Harbor Seal:				
Installation	N/A	0	0	0
Removal	12	N/A	0	0
Long-beaked common dolphin:				
Installation	N/A	0	0	0
Removal	54	N/A	0	0
Pacific white-sided dolphin:				
Installation	N/A	0	0	0
Removal	12	N/A	0	0

TABLE 5—EXPOSURE ESTIMATES FROM ELCAS PILE DRIVING AND REMOVAL PRIOR TO IMPLEMENTATION OF MITIGATION MEASURES—Continued

Species	Annual Marine Mammal Exposure (All Sources)			
	Level B Behavior (Non-Impulse)	Level B Behavior (Impulse)	Level A (Cetacean)	Level A (Pinniped) 120 dB_{rms} re 1 µPa
Risso's dolphin:				
Installation	N/A	0	0	0
Removal	30	N/A	0	0
Short-beaked common dolphin:				
Installation	N/A	80	0	0
Removal	462	N/A	0	0
Total Annual Exposures	846	140	0	0

In summary, for all underwater detonations and ELCAS pile driving activities, the Navy's impact model predicted that no mortality and/or Level A harassment (injury) would occur to marine mammal species and stocks within the proposed action area.

Potential Impacts to Marine Mammal Habitat

The proposed training activities at SSTC will not result in any permanent impact on habitats used by marine mammals, and potentially short-term to minimum impact to the food sources such as forage fish. There are no known haul-out sites, foraging hotspots, or other ocean bottom structures of significant biological importance to harbor seals, California sea lions, or bottlenose dolphins within SSTC. Therefore, the main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously.

The primary source of effects to marine mammal habitat is exposures resulting from underwater detonation training and ELCAS pile driving and removal training events. Other sources that may affect marine mammal habitat include changes in transiting vessels, vessel strike, turbidity, and introduction of fuel, debris, ordnance, and chemical residues. However, each of these components was addressed in the SSTC Environmental Impact Statement (EIS) and it is the Navy's assertion that there would be no likely impacts to marine mammal habitats from these training events.

The most likely impact to marine mammal habitat occurs from underwater detonation and pile driving and removal effects on likely marine mammal prey (i.e., fish) within SSTC.

There are currently no well-established thresholds for estimating effects to fish from explosives other than mortality models. Fish that are located in the water column, in proximity to the source of detonation could be injured, killed, or disturbed by the impulsive sound and could leave the area temporarily. Continental Shelf Inc. (2004) summarized a few studies conducted to determine effects associated with removal of offshore structures (e.g., oil rigs) in the Gulf of Mexico. Their findings revealed that at very close range, underwater explosions are lethal to most fish species regardless of size, shape, or internal anatomy. In most situations, cause of death in fish has been massive organ and tissue damage and internal bleeding. At longer range, species with gas-filled swimbladders (e.g., snapper, cod, and striped bass) are more susceptible than those without swimbladders (e.g., flounders, eels).

Studies also suggest that larger fish are generally less susceptible to death or injury than small fish. Moreover, elongated forms that are round in cross section are less at risk than deep-bodied forms. Orientation of fish relative to the shock wave may also affect the extent of injury. Open water pelagic fish (e.g., mackerel) seem to be less affected than reef fishes. The results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. All underwater detonations are of small scale (under 29 lbs NEW), and the proposed training exercises would be conducted in several areas within the large SSTC Study Area over the seasons during the year. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the SSTC training exercises involving explosives will likely be insignificant to the population as a whole.

Therefore, potential impacts to marine mammal food resources within the SSTC are expected to be minimal given both the very geographic and spatially limited scope of most Navy at-sea activities including underwater detonations, and the high biological productivity of these resources. No short or long term effects to marine mammal food resources from Navy activities are anticipated within the SSTC Study Area.

Subsistence Harvest of Marine Mammals

NMFS has determined that the Navy's proposed training activities at the SSTC would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use since there are no such uses in the specified area.

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 Navy's specified activities have been described based on best estimates of the planned training exercises at SSTC action area. Some of the noises that would be generated as a result of the proposed underwater detonation and ELCAS pile driving activities, are high intensity. However, the explosives that the Navy plans to use in the proposed SSTC action area are all small detonators under 29 lbs NEW, which result in relatively small ZOIs. In addition, the locations where the proposed training activities are planned are shallow water areas which would effectively contain the spreading of explosive energy within the bottom boundary. Taking the above into account, along with the fact that NMFS anticipates no mortalities and injuries to result from the action, the fact that there are no specific areas of reproductive importance for marine mammals recognized within the SSTC area, the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has determined that Navy training exercises utilizing underwater detonations and ELCAS pile driving and removal will have a negligible impact on the affected marine mammal species and stocks present in the SSTC Study Area.

NMFS' analysis of potential behavioral harassment, temporary threshold shifts, permanent threshold shifts, injury, and mortality to marine mammals as a result of the SSTC training activities was provided earlier in this document and is analyzed in more detail below.

Behavioral Harassment

As discussed earlier, the Navy's proposed SSTC training activities would use small underwater explosives with maximum NEW of 29 lbs 16 events per year in areas of small ZOIs that would mostly eliminate the likelihood of mortality and injury to marine mammals. In addition, these detonation events are widely dispersed in several designated sites within the SSTC Study Area. The probability that detonation events will overlap in time and space with marine mammals is low, particularly given the densities of marine mammals in the vicinity of SSTC Study Area and the implementation of monitoring and mitigation measures. Moreover, NMFS does not expect animals to experience repeat exposures to the same sound source as animals will likely move away from the source after being exposed. In addition, these isolated exposures, when received at distances of Level B behavioral harassment (i.e., 177 dB re 1 μPa^2-s), 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 impulse noise from detonation are not expected to affect annual rates or recruitment or survival.

TTS

NMFS and the Navy have estimated that individuals of some species of marine mammals may sustain some level of temporary threshold shift TTS from underwater detonations. TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. The TTS sustained by an animal is primarily classified by three characteristics:

- Frequency—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds- Southall *et al.* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above).
- Degree of the shift (i.e., how many dB is the sensitivity of the hearing reduced by)—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). Since the impulse from detonation is extremely brief, an animal would have to approach very close to the detonation site to increase the received SEL. The threshold for the onset of TTS for detonations is a dual criteria: 182 dB re 1 μPa^2-s or 23 psi, which might be received at distances from 20—490 yards from the centers of detonation based on the types of NEW involved to receive the SEL that causes TTS compared to similar source level with longer durations (such as sonar signals).
- Duration of TTS (Recovery time)—Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to SEL at 217 dB re 1 μPa^2-s, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.* 2007), recovery took 4 days.

Although the degree of TTS depends on the received noise levels and exposure time, all studies show that TTS is reversible and animals' sensitivity is expected to recover fully in minutes to hours based on the fact that the proposed underwater detonations are small in scale and isolated. Therefore, NMFS expects that TTS would not affect annual rates of recruitment or survival.

Acoustic Masking or Communication Impairment

As discussed above, it is also possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Impulse sounds from underwater detonation and pile driving are brief and the majority of most animals' vocalizations would not be masked. Although impulse noises such as those from underwater explosives and impact pile driving tend to decay at distance, and thus become non-impulse, give the area of extremely shallow water (which effectively attenuates low frequency sound of these impulses) and the small NEW of explosives, the SPLs at these distances are expected to be barely above ambient level. Therefore, masking effects from underwater detonation are expected to be minimal and unlikely. If masking or communication impairment were to occur briefly, it would be in the frequency ranges below 100 Hz, which overlaps with some mysticete vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because of the short impulse.

PTS, Injury, or Mortality

The modeling for take estimates predict that no marine mammal would be taken by Level A harassment (injury, PTS included) or mortality due to the low power of the underwater detonation and the small ZOIs. Further, the mitigation measures have been designed to ensure that animals are detected in time to avoid injury or mortality when TDFDs are used, in consideration of swim speed.

Based on these assessments, NMFS determined that approximately 6 gray whales, 221 California sea lions, 12 harbor seals, 323 bottlenose dolphins, 106 long-beaked common dolphins, 24 Pacific white-sided dolphins, 63 Risso's dolphins, and 990 short-beaked common dolphins could be affected by Level B harassment (TTS and sub-TTS) as a result of the proposed SSTC training activities.

Additionally, as discussed previously, the aforementioned take estimates do not account for the implementation of mitigation measures. With the implementation of mitigation and monitoring measures, NMFS expects that the takes would be reduced further. Coupled with the fact that these impacts will likely not occur in areas and times critical to reproduction, NMFS has determined that the total taking incidental to the Navy's proposed SSTC training activities would have a negligible impact on the marine mammal species and stocks present in the SSTC Study Area.

Endangered Species Act (ESA)

No marine mammal species are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the study area. Therefore, section 7 consultation under the ESA for NMFS's proposed issuance of an MMPA authorization is not warranted.

National Environmental Policy Act (NEPA)

The Navy has prepared a Final Environmental Impact Statement (EIS) for the proposed SSTC training activities. The FEIS was released in January 2011 and it is available at *http://www.silverstrandtraining complexeis.com/EIS.aspx/*. NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the EIS. NMFS subsequently adopted the FEIS for the SSTC training activities.

As a result of these determinations, NMFS has issued an IHA to the Navy to conduct training activities at the SSTC Study Area, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 18, 2012.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC018

Takes of Marine Mammals Incidental to Specified Activities; Pile Driving for Honolulu Seawater Air Conditioning Project

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 complete and adequate application from Honolulu Seawater Air Conditioning, LLC (HSWAC) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving offshore Honolulu, Hawaii. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to incidentally harass, by Level B harassment, 17 species of marine mammals during the specified activity within a specific geographic region and is requesting comments on its proposal.

DATES: Comments and information must be received no later than August 23, 2012.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document 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: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has

the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 16, 2012, NMFS received an application from HSWAC requesting an IHA for the take, by Level B harassment, of small numbers of 17 marine mammal species incidental to pile driving activities offshore Honolulu, Hawaii. Upon receipt of additional information and a revised application, NMFS determined the application complete and adequate on April 27, 2012. HSWAC plans to install piles during construction of a seawater air conditioning project. Once constructed, an offshore pipe would pump cold, deep seawater to a pump station onshore. Pile driving operations would include installation of test piles, installation of sheet piles for construction of a temporary receiving pit, and installation of pipe piles to help support the intake and discharge pipes. Because elevated sound levels from pile driving have the potential to result in marine mammal harassment, NMFS is proposing to issue an IHA for take incidental to pile driving activities.

Description of the Specified Activity

The purpose of HSWAC's project is to construct a district cooling system for commercial and residential properties in Honolulu. In summary, the system would consist of a seawater intake pipe extending about 7.6 kilometers (km) offshore, a seawater discharge pipe extending about 1.6 km offshore, a land-based pump station, and a land-based chilled water distribution system. HSWAC proposes to drive steel sheet piles and cylindrical steel piles as part of the construction. The piles would be used to construct a temporary "receiving pit," implement a test pile program, and stabilize concrete collars supporting the intake and discharge pipes. Only pile driving activities are expected to result in incidental harassment of marine mammals and will be the focus of this notice. The depth and water flow velocity of the 1.6-meter (m) seawater intake pipe would be such that entrapment of a marine mammal is considered discountable. HSWAC considered placing a screen across the intake pipe (acting as an excluder device), but NMFS Pacific Islands Region and NFMS Pacific Islands Fisheries Science Center determined that such a device may actually increase the water flow velocity, and therefore, the potential for impingement. A summary of the pile driving activities are provided in Table 1 below. Further details regarding installation of the pipelines are provided in HSWAC's IHA application here: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

HSWAC would begin offshore work by installing 10–12 51-cm diameter steel pipe piles using a hydraulic impact hammer (Junttan Model HHK9 or similar). These "test piles" would be located along the pipe alignment from the receiving pit to a depth of about 46 m. The distance from the piles to shore would vary from about 488 m to 1,128 m. Each test pile should take about 15 minutes to drive and pile driving would be complete in 1–2 weeks with about one pile installed per day. Each test pile would be removed by cable pull immediately after installation and resistance testing.

After installation of the test piles, HSWAC would prepare a 12-m by 12-m by 6-m deep receiving pit to remove a micro-tunnel boring machine from the nearshore micro-tunnel. The receiving pit would be about 488 m offshore in about 9 m of water. HSWAC would use a barge-mounted vibratory pile driver (J&M Model 44–50 or similar) to install 80 61-centimeter (cm) steel sheet piles around the perimeter of the receiving pit. Pile installation is expected to take 10 hours of driving per day for about 16 days. After sheet piles are installed, the pit would be excavated.

Next, HSWAC would drive 113 51-cm diameter steel pipe piles, or "production" piles. HSWAC would use the same type of hydraulic impact hammer to install piles through concrete collars that hold the intake and discharge pipes in place on the seafloor. Fifty-two concrete collars would have two piles each and nine more collars would have a single pile. Each pile would take about 15 minutes to drive and HSWAC estimates that three or four piles would be installed per day. Installation of the 113 steel pipe piles should take about 4–6 weeks.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES TO OCCUR DURING CONSTRUCTION OF THE SEAWATER AIR CONDITIONING SYSTEM

Activity	51-cm Test pipe piles	61-cm Sheet piles	51-cm Production pipe piles
Location	488–1,128 m offshore	488 m offshore	488–1,128 m offshore.
Number of piles	10–12	80	113.
Pile driving duration	1–2 weeks	16 days	4–6 weeks.
Dates of activity	October 2012	November 2012 or April 2013	March/April 2013.
Hammer type	Impact	Vibratory	Impact.

Date and Duration of Proposed Activity

HSWAC plans to begin pile driving in October 2012. The test piles would be driven in 1–2 weeks in October 2012. Sheet pile installation would last for about 16 days either in November 2012 or April 2013 in order to avoid the peak humpback whale season. The production piles would be installed out to about 46 m depth once the intake and discharge pipes are deployed. If construction proceeds quickly enough, the production piles would be installed around March/April 2013. If production piles cannot be installed during the 1-year IHA period, HSWAC would apply for another IHA and install the production piles sometime after September 2013. NMFS would issue the IHA for a 1-year period to allow for construction and weather delays. Pile driving would only occur in weather that provides adequate visibility for marine mammal monitoring activities.

Region of Proposed Activity

The proposed area for installation of the HSWAC intake and discharge pipes lies between Diamond Head and the Reef Runway of the Honolulu International Airport and is just offshore from the entrances of Honolulu Harbor and Kewalo Basin. Honolulu Harbor has historically been, and continues to be, an industrial area. Honolulu Harbor is the largest and most important of Oahu's three commercial harbors as the state's port-of-entry for nearly all imported goods. Kewalo Basin, Oahu's smallest commercial harbor, was constructed in the 1920s to ease the congestion in Honolulu Harbor and provide docking for lumber schooners.

Over the years, the surrounding waters have been repeatedly polluted by wastewater treatment plant outfalls, sewage pumps, and stream discharges. The basin is now also used by tour boats, commercial fishing vessels, and charter fishing boats. Recreational activities in the area include fishing, swimming, surfing, snorkeling, diving, and paddling. However, fishery resources in the proposed project area are considered depleted as a result of habitat degradation and overfishing. An underwater survey was performed around the area proposed for pipeline installation. The seafloor slopes with varying degrees and consists mostly of medium to coarse sands and coral rubble.

Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are "re: 20 μPa" and "re: 1 μPa," respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Source levels for the vibratory and impact hammer are expected to be 175 dB and 205 dB, respectively. These source levels are based on near-source, unattenuated sound pressures from the California Department of Transportation's Compendium of Pile Driving Sound. Assuming a practical spreading loss of 15 log R, HSWAC estimated distances from the sound source to sound thresholds at which point NMFS considers marine mammals to be harassed (CALTRANS, 2007). The distances to each threshold for each pile driving activity are summarized in Table 2 below.

TABLE 2—DISTANCES TO NMFS' HARASSMENT THRESHOLDS FOR EACH PROPOSED PILE DRIVING ACTIVITY

Harassment threshold	51-cm test pipe piles	61-cm Sheet piles	51-cm production pipe piles
Level A—180 dB	47 m	n/a	47 m.
Level B—160 dB (impulsive sound)	1,000 m	n/a	1,000 m.
Level B—120 dB (continuous sound)	n/a	4,700 m	n/a.

Description of Marine Mammals in the Area of the Specified Activity

There are 24 marine mammal species with possible or known occurrence around the Main Hawaiian Islands (Table 3). However, not all of these species occur within HSWAC's proposed project area or during the same time as proposed pile driving activities.

TABLE 3—MARINE MAMMAL SPECIES AROUND HAWAII

Species	Abundance in Hawaii	Season	ESA status
Blainville's beaked whale (*Mesoplodon densirostris*)	2,872	Year round	
Blue whale (*Balaenoptera musculus*)	n/a	Winter/Summer	Endangered.
Bryde's whale (*Balaenoptera edeni*)	469	Year round	
Cuvier's beaked whale (*Ziphius cavirostris*)	15,242	Year round	
Dwarf sperm whale (*Kogia sima*)	17,519	n/a	
False killer whale (*Pseudorca crassidens*)	484	Year round	Proposed.
Humpback whale (*Megaptera novaeangliae*)	10,103	Winter	Endangered.
Killer whale (*Orcinus orca*)	349	n/a	
Longman's beaked whale (*Indopacetus pacificus*)	1,007	n/a	
Melon-headed whale (*Peponocephala electra*)	2,950	n/a	
Minke whale (*Balaenoptera acutorostrata*)	n/a	Winter	
Pilot whale, short finned (*Globicephala macrorhynchus*)	8,846	Year round	
Pygmy killer whale (*Feresa attenuate*)	956	Year round	
Pygmy sperm whale (*Kogia breviceps*)	7,138	n/a	
Sei whale (*Balaenoptera borealis*)	77	Year round	Endangered.
Sperm whale (*Physeter macrocephalus*)	6,919	Year round	Endangered.
Bottlenose dolphin (*Tursiops truncatus*)	3,178	Year round	
Fraser's dolphin (*Lagenodelphis hosei*)	10,226	Year round	
Risso's dolphin (*Grampus griseus*)	2,372	Year round	
Rough-toothed dolphin (*Steno bredanensis*)	8,709	Year round	
Spinner dolphin (*Stenella longirostris*)	3,351	Year round	
Pantropical spotted dolphin (*Stenella attenuata*)	8,978	Year round	
Striped dolphin (*Stenella coeruleoalba*)	13,148	Year round	
Monk seal (*Monachus schauinslandi*)	1,161	Year round	Endangered.

Blue whales and killer whales are considered rare around Hawaii and would be highly unlikely to occur within HSWAC's proposed project area. Sei whales, sperm whales, and striped dolphins are all found in deeper, offshore waters and are highly unlikely to occur within HSWAC's proposed project due to habitat preference. Therefore, these five marine mammal species will not be further considered. The remaining 19 species are discussed in further detail below.

Blainville's Beaked Whale

Blainville's beaked whales occur in tropical and temperate waters worldwide. They typically prefer deep, offshore waters of the continental shelf and are often associated with bathymetric structures such as seamounts or submarine canyons. Blainville's beaked whales are often observed individually or in pods of three to seven animals. For management purposes, this species is divided into three U.S. stocks: the Hawaiian stock, the Northern Gulf of Mexico stock, and the Western North Atlantic stock. The Hawaiian stock includes animals found both within the Hawaiian Islands Exclusive Economic Zone (EEZ) and in surrounding international waters; however most abundance and distribution data comes from within the EEZ. The best available abundance estimate for the Hawaiian stock is 2,872 animals, but there is insufficient data to determine the population trend. Blainville's beaked whales are not listed under the Endangered Species Act (ESA) nor depleted under the MMPA.

Bryde's Whale

Bryde's whales prefer highly productive tropical, subtropical, and warm temperate waters around the world. They are typically found in deep, offshore waters, but may occur near the coast and continental shelf. This species is usually seen individually or in pairs, but loose aggregations may form around feeding areas. Bryde's whales within the Pacific U.S. EEZ are divided into two groups for stock assessment purposes: the Hawaiian stock and the eastern Pacific stock. The Hawaiian stock includes animals found both within the Hawaiian Islands EEZ and in surrounding international waters; however most abundance and distribution data comes from within the EEZ. The best available abundance estimate for the Hawaiian stock is 469 animals, but there are insufficient data to determine the population trend. Bryde's whales are not listed under the ESA nor depleted under the MMPA.

Cuvier's Beaked Whale

Cuvier's beaked whales are found in temperate, subtropical, and tropical waters around the world. Of all the beaked whale species, they likely have the most extensive range and distribution. Cuvier's beaked whales prefer deep, pelagic waters and are often associated with steep underwater bathymetry. They are typically seen alone or in groups of two to 12 animals, but are considered shy and tend to avoid vessels. Cuvier's beaked whales within the Pacific U.S. EEZ are divided into three discrete areas: Hawaiian waters, Alaskan waters, and waters off California, Oregon, and Washington. The Hawaiian stock includes animals found both within the Hawaiian Islands EEZ and in surrounding international waters; however most abundance and distribution data comes from within the EEZ. The best available abundance estimate for the Hawaiian stock is 15,242 animals, but there are insufficient data to determine the population trend. Cuvier's beaked whales are not listed under the ESA nor depleted under the MMPA.

Dwarf Sperm Whale

Dwarf sperm whales are found in tropical, subtropical, and temperate waters worldwide. They are most common along the continental shelf edge and slope and considered the sixth most commonly seen toothed whale around the Hawaiian Islands. They are typically seen alone or in groups of six to 10 animals, but are considered quite timid. Dwarf sperm whales within the Pacific U.S. EEZ are divided into two discrete areas: Hawaiian waters and waters off California, Oregon, and Washington. The Hawaiian stock includes animals found both within the Hawaiian Islands EEZ and in surrounding international waters; however most abundance and distribution data comes from within the EEZ. The best available abundance estimate for the Hawaiian stock is 17,519 animals, but there are insufficient data to determine the population trend. Dwarf sperm whales are not listed under the ESA nor depleted under the MMPA.

False Killer Whale

False killer whales are found in tropical and temperate oceans worldwide. In the U.S., their distribution ranges from Hawaii, along the entire West Coast, and from the mid-Atlantic coastal states south. They prefer deep waters of at least 1,000 m and are typically found in groups of 10–20 animals. Two stocks exist within Hawaiian Islands EEZ and adjacent international waters with overlapping ranges: the insular stock and the pelagic stock. False killer whales within HSWAC's proposed project area would be part of the insular stock. The best available abundance estimate for Hawaii insular stock is 123 animals. Sighting data from 1994–2003 suggest a statistically significant decline. False killer whales are not currently listed under the ESA nor depleted under the MMPA. However, in 2010, NMFS proposed to list the Hawaii insular stock as endangered under the ESA. A final listing decision has not been made.

Humpback Whale

Humpback whales live in all major oceans from the equator to the sub-polar latitudes. These large, baleen whales rely on warmer waters for calving, but feed on krill, plankton, and small fish in cold, productive coastal waters. In the North Pacific, there are at least three separate humpback populations: the California/Oregon/Washington stock, the Central North Pacific stock, and the Western North Pacific stock. Any humpbacks around the Hawaiian Islands are part of the Central North Pacific stock, which winters in the Hawaiian Islands and migrates to waters off Canada and Alaska each spring. The Hawaiian Islands Humpback Whale National Marine Sanctuary was established in 1992 to protect humpback whales and their habitat off the shores of Maui, Kauai, Oahu, Molokai, and the Big Island. Point estimates of abundance for Hawaii from recent SPLASH data range from 7,469 to 10,103. The estimate of humpback whales from the best model was 10,103, but no associated CV has been calculated. The minimum population estimate for the central North Pacific humpback whale stock is 5,833. Data from multiple studies suggest that the current population trend for the central North Pacific stock is increasing (Mobley *et al.*, 2001; Mizroch *et al.*, 2004; Calambokidis *et al.*, 2008). Humpback whales are considered endangered under the ESA and depleted under the MMPA.

Longman's Beaked Whale

Longman's beaked whales are found in warm, deep waters of tropical and subtropical regions of the Pacific and Indian Oceans. However, little is known about this species and they are considered one of the rarest whales. They are typically seen in groups of 10–20 animals, and sometimes in association with pilot whales, spinner dolphins, and bottlenose dolphins. There is one Pacific stock of Longman's beaked whales, found within waters of

the Hawaiian Islands EEZ. The best available abundance estimate for the Hawaii stock is 1,007 animals and there are no data available on current population trend. Longman's beaked whales are not listed under the ESA nor depleted under the MMPA.

Melon-headed Whale

Melon-headed whales are found primarily in deep, tropical waters worldwide. They often travel in groups of hundreds to over 1,000 animals. There are three recognized stocks in the U.S.: Hawaii, Northern Gulf of Mexico, and Western North Atlantic. The best available abundance estimate for the Hawaii stock is 2,950 animals, but the current population trend is unknown due to lack of data. Melon-headed whales are not listed under the ESA nor depleted under the MMPA.

Minke Whale

Minke whales prefer temperate to boreal waters, but are also found in tropical and subtropical areas. They are the smallest baleen whale in North American waters and there are at least two recognized species: northern or common minke whale and Antarctic minke whale. Minke whales are often active at the surface and found in both coastal and offshore waters individually or in small groups of 2–3. For management purposes, minke whales in U.S. waters are divided into four stocks: Alaska, Canadian Eastern Coastal, California/Oregon/Washington, and Hawaii. Any minke whales in the proposed action area would be part of the Hawaii stock and would only be present during winter months. There is currently no abundance estimate for this stock of minke whales and no data are available on the current population trend. Minke whales are not listed under the ESA nor depleted under the MMPA.

Short-Finned Pilot Whale

Short-finned pilot whales are found in tropical and temperate waters worldwide. They can be found closer to shore, but typically prefer deeper waters of at least 305 m. Short-finned pilot whales are often traveling and foraging in groups of 25–50 animals. For stock assessment purposes, short-finned pilot whales within the Pacific U.S. EEZ are divided into two discrete areas: Hawaii and waters off California, Oregon, and Washington. The best available abundance estimate for the Hawaii stock is 8,846 animals, but the current population trend is unknown due to lack of data. Short-finned pilot whales are not listed under the ESA nor depleted under the MMPA.

Pygmy Killer Whale

Pygmy killer whales are found primarily in tropical and subtropical waters worldwide. They prefer deep waters where their prey is concentrated and usually occur in groups of 50 or less. Pygmy killer whales are relatively rare around Hawaii, but have been sighted around numerous islands. Three U.S. stocks exist for this species: Hawaii, Western North Atlantic, and Northern Gulf of Mexico. The best available abundance estimate for the Hawaii stock is 956 animals and there are no data available on current population trend. Pygmy killer whales are not listed under the ESA nor depleted under the MMPA.

Pygmy Sperm Whale

Pygmy sperm whales are found in tropical, subtropical, and temperate waters worldwide. They are most common along the continental shelf edge and slope. Pygmy sperm whales are often seen alone or in groups of 6–7 animals, but are considered quite timid. For management purposes, this species has been divided into four stocks within U.S. waters: Hawaii, California/Oregon/Washington, Northern Gulf of Mexico, and the Western North Atlantic stock. The best available abundance estimate for the Hawaii stock is 7,138 animals and there is no data available on current population trend. Pygmy sperm whales are not listed under the ESA nor depleted under the MMPA.

Bottlenose Dolphin

Bottlenose dolphins are found in temperate and tropical waters worldwide. Some populations migrate into bays, estuaries, and rivers, while others inhabit pelagic waters near the continental shelf. Bottlenose dolphins are often seen in groups of two to 15 animals, but offshore herds sometimes reach several hundred. There are 11 stocks of bottlenose dolphins in U.S waters, and animals within HSWAC's proposed project area would be part of the Hawaiian Islands stock complex. Recent data suggests that there may be distinct resident populations of bottlenose dolphins at each of the four main Hawaiian Island groups—Kauai and Niihau, Oahu, the Four-Islands region, and Hawaii. Limited surveys have been done for the Oahu stock and there is no precise population estimate for this area. Group sizes of bottlenose sightings around Oahu range from three to 24. The best available abundance estimate for the Hawaiian pelagic stock (between the 1,000 m isobaths and the EEZ boundary) is 3,178 animals. Population trends for all U.S. stocks are currently unknown. Bottlenose dolphins are not listed under the ESA and only the Western North Atlantic coastal stock is depleted under the MMPA.

Fraser's Dolphin

Fraser's dolphins are found in warm temperate, subtropical, and tropical waters worldwide. They usually occur in deep waters associated with areas of upwelling. Fraser's dolphins are usually found in tight groups averaging 10–100 animals and may be seen in mixed schools with false killer whales, melon-headed whales, Risso's dolphins, and short-finned pilot whales. For stock assessment purposes, there is a single Pacific management stock including animals found within the Hawaiian Islands EEZ and in surrounding international waters. The best available abundance estimate for this stock is 10,266 animals. There are no data available on current population trend. Fraser's dolphins are not listed under the ESA nor depleted under the MMPA.

Risso's Dolphin

Risso's dolphins are found in temperate, subtropical, and tropical waters worldwide that are generally deeper than 1,000 m. Their group size averages 10–30 animals, but they are also seen alone, in pairs, and in much larger aggregations. There are two stocks within the Pacific U.S. EEZ: Hawaii and waters off California, Oregon, and Washington. The best available abundance estimate for the Hawaii stock is 2,372 animals and no data are available on current population trend. Risso's dolphins are not listed under the ESA nor depleted under the MMPA.

Rough-Toothed Dolphin

Rough-toothed dolphins prefer deeper areas of tropical and warm temperate waters worldwide. This species usually occurs in tight groups of 10–20 animals and is often associated with short-finned pilot whales, bottlenose dolphins, pantropical spotted dolphins, and spinner dolphins. There are two Pacific management stocks of rough-toothed dolphins: Hawaii and American Samoa. The best available abundance estimate for the Hawaii stock is 8,709 animals, but there are no data available on current population trend. Rough-toothed dolphins are not listed under the ESA nor depleted under the MMPA.

Spinner Dolphin

Spinner dolphins are found in all tropical and subtropical oceans. They are most common in deep ocean waters, but the Hawaii population has a more coastal distribution. Around Hawaii,

spinner dolphins often rest in bays and protected areas during the day and feed offshore at night. Spinner dolphins groups can reach up to several thousand animals and they often school with other dolphin species. Spinner dolphins living around Hawaiian Islands are part of the Hawaii stock complex, which is divided into six stocks: Hawaii Island, Oahu/Four-Islands, Kauai/Niihau, Pearl and Hermes Reef, Kure/Midway, and Hawaii pelagic. No data on current population sizes for any of the Hawaiian Island stocks are available. In 2002, a vessel survey estimated an abundance of 3,351 animals for the entire Hawaii stock complex. Spinner dolphins around Oahu typically remain within 8 km from shore and the average group size is 24 animals. There are no data available on the current population trend. Spinner dolphins are not listed under the ESA and only the eastern stock in the Eastern Tropical Pacific Ocean is depleted under the MMPA.

Pantropical Spotted Dolphin

Pantropical spotted dolphins are found in tropical and subtropical waters worldwide. Similar to the Hawaii stock complex of spinner dolphins, spotted dolphins spend the day in relatively shallow water and move offshore at night to search for prey. They often occur in groups of several hundred to 1,000 animals and school with other dolphin species. Pantropical spotted dolphins are common and abundant throughout the Hawaiian Islands. The best available abundance estimate for pantropical spotted dolphins within the Hawaiian Islands EEZ is 8,978 animals. No data are available on current population trend. Pantropical spotted dolphins are not listed under the ESA and only the Pacific Northeastern offshore stock is depleted under the MMPA.

Hawaiian Monk Seal

Monk seals live in warm subtropical waters and spend most of their time at sea. They prefer waters surrounding atolls, islands, and areas farther offshore on reefs and submerged banks. When on land, monk seals breed and haul out on sandy beaches and volcanic rock. The majority of monk seals live in six main breeding subpopulations in the Northwestern Hawaiian Islands. The best estimate of the total Hawaiian monk seal population is 1,161 animals. The total number of individually identifiable seals in the Main Hawaiian Islands (based on sightings in 2008) is 113. The Main Hawaiian Islands monk seal population appears to be increasing by about 5.6 percent per year. Hawaiian monk seals are listed as endangered under the ESA and depleted under the MMPA.

Potential Effects of the Specified Activity on Marine Mammals

Elevated in-water sound levels from pile driving in the proposed project area may temporarily impact marine mammal behavior. (Elevated in-air sound levels are not a concern because the distance to the Level B harassment threshold for in-air sound (100 dB) does not reach the nearest monk seal haul out at Magic Island in Waikiki.) Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.*, 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.*, 2007).

Cetaceans are divided into three functional hearing groups: low-frequency, mid-frequency, and high-frequency. Bryde's whale, humpback whale, and minke whale are considered low-frequency cetaceans and the estimated auditory bandwidth (lower to upper frequency cut-off) ranges from 7 Hertz (Hz) to 22 kilohertz (kHz). Blainville's beaked whale, Cuvier's beaked whale, false killer whale, Longman's beaked whale, melon-headed whale, short-finned pilot whale, pygmy killer whale, and all dolphin species are considered mid-frequency cetaceans and their estimated auditory bandwidth ranges from 150 Hz to 160 kHz. Dwarf sperm whale and pygmy sperm whale are considered high-frequency cetaceans and their estimated auditory bandwidth ranges from 200 Hz to 180 kHz (Southall *et al.*, 2007).

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.*, 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and underwater, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, pinnipeds can hear frequencies from 75 Hz to 30 kHz (Southall *et al.*, 2007). However, based on underwater audiograms for a single animal, the in-water hearing range of Hawaiian monk seals may be narrower than other pinnipeds. Thomas *et al.*, (1990) showed that one Hawaiian monk seal's in-water hearing ranged from 2 kHz to 48 kHz with the most sensitivity between 12 kHz and 28 kHz.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for when PTS first occurs in marine mammals; therefore, it must be estimated from when TTS first occurs and from the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥40 dB of TTS. PTS is considered auditory injury (Southall *et al.*, 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007). Due to proposed mitigation measures and source levels in the proposed project area, NMFS does not expect marine mammals to be exposed to PTS levels.

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. The 180 dB re: 1 μPa (rms) criterion is the received level which NMFS first applied before additional TTS measurements for marine mammals became available, when one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals at higher sound levels. The 180 dB level is often used to establish a shutdown zone to protect cetaceans from potential for injury. NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re: 1 μPa (rms) may experience Level B harassment.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during

exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, occurs in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can occur to varying degrees (e.g., an animal's hearing sensitivity might be reduced by 6 dB or by 30 dB). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends.

Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Researchers have derived TTS information for odontocetes (toothed whales) from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.*, 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (cf. Southall *et al.*, 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.*, 2007).

For pinnipeds, sound exposures that elicit TTS underwater have been measured in harbor seals, California sea lions, and northern elephant seals. Exposures to nonpulse sound over different periods of time showed a difference in TTS-onset between species (Kastak *et al.*, 2005). Data suggest that harbor seals experience TTS-onset at a lower sound exposure level than other pinnipeds. Only one study has been done on underwater TTS-onset in pinnipeds exposed to pulse sounds. Finneran *et al.* (2003) showed no measureable TTS in two California sea lions following exposures to a transducer.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS. For HSWAC's proposed project, NMFS expects cases of TTS to be improbable given: (1) The limited amount of pile driving over a 1-year period; (2) the motility of free-ranging marine mammals in the water column; and (3) the propensity for marine mammals to avoid obtrusive sounds.

Behavioral Effects

Behavioral disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Marine mammal reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular proximity to activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

Continuous Sound

Southall *et al.* (2007) summarizes numerous behavioral observations made of low-frequency cetaceans to a range of nonpulse sound sources, such as vibratory pile driving. Generally, the data suggest no or limited responses to received levels of 90–120 dB (rms) and an increasing probability of behavioral effects in the 120–160 dB (rms) range. However, differences in source proximity, novelty of the sound, operational features, etc., seem to be at least as important as exposure level when predicting behavioral response. Southall *et al.* (2007) also summarizes numerous mid-frequency cetaceans have also been observed responding to nonpulse sounds such as pingers, vessel noise, sonar, and playbacks of drilling sounds. Again, contextual variables seem to play a large role in behavioral response. In some studies, animals responded with high severity scores while others did not respond even at higher exposure levels. There are also notable differences in results from field versus laboratory conditions. While multiple controlled studies of high-frequency cetaceans to nonpulse sound have been conducted, only one species (harbor porpoise) has been extensively studied. The data suggest that harbor porpoises may be sensitive to lower received levels than some other taxa. Wild harbor porpoises avoided all recorded exposures above 140 dB (rms), but it is unknown whether this type of behavioral response translates to other high-frequency cetaceans (Southall *et al.*, 2007).

There are limited data available on the behavioral effects of continuous

sound (e.g., vibratory pile driving) on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 microPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high-frequency acoustic harassment devices around nine sites. Seals came within 44 m of the active acoustic harassment devices and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), scientists subjected a group of seals to non-pulse sounds between 8 and 16 kHz. Exposures between 80 and 107 dB did not induce strong behavioral responses; however, a single observation from 100 to 110 dB indicated an avoidance response. The seals returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies; the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging animals may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items.

Impulse Sounds

Southall *et al.* (2007) addresses behavioral responses of marine mammals to impulse sounds (like impact pile driving). The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources, including: Small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses are not available.

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources, including: Small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds are limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.*, 2007).

Anticipated Effects on Habitat

No permanent detrimental impacts to marine mammal habitat are expected to result from the proposed project. Pile driving (resulting in temporary ensonification) may impact prey species and marine mammals by resulting in avoidance or abandonment of the area and increased turbidity; however, these impacts are expected to be localized and temporary. The receiving pit would be backfilled after construction and while the intake and discharge pipes would take up a limited amount of space on the seafloor, there are no expected adverse impacts to marine mammal habitat. The pipelines would actually create additional benthic habitat for coral recruitment and growth of fish communities by increasing surface area. The discharge pipe would return slightly cooler, nutrient-rich water to the ocean. However, the discharge water would be within one degree of ambient seawater temperature and is not expected to affect marine mammal habitat.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. HSWAC proposed the following mitigation measures to minimize adverse impacts to marine mammals:

Temporal Restrictions

Based on NMFS' recommendation, HSWAC would not conduct any vibratory pile driving from December 1 through March 31. This is the peak humpback whale season for Hawaii and there is a possibility that humpback whales may occur within the proposed HSWAC project site. HSWAC agreed to restrict vibratory pile driving because elevated sound levels (120 dB or higher) from this activity could extend out 4,700 m from the source and monitoring such a large area in order to prevent Level B harassment is not feasible.

HSWAC may still conduct impact pile driving during the humpback whale season (with an additional mitigation measure). The distance to the Level B harassment zone for impact pile driving is much smaller (1,000 m) and HSWAC would monitor this area and stop pile driving in order to prevent Level B harassment of humpback whales (see next section). Further temporal restrictions are not practicable for HSWAC because pile driving cannot be conducted during summer months due to swells on the south shore of Oahu.

Establishment of an Exclusion Zone

The purpose of HSWAC's proposed exclusion zone is to prevent Level A harassment (injury) of any marine mammal species and Level B harassment of humpback whales. During all in-water impact pile driving, HSWAC would establish a radius around each pile driving site that would be continuously monitored for marine mammals. If a marine mammal is observed nearing or entering this perimeter, HSWAC would stop pile driving operations to prevent marine mammals from being exposed to sounds at or above 180 dB. More specifically, HSWAC would monitor a 91-m distance around each pile driving site. This area would encompass the estimated 180-dB isopleth of 47 m, within which injury could occur, plus an additional 44-m buffer. The exclusion zone would be monitored 30 minutes before and during all impact pile driving to ensure that no marine mammals enter the 91-m radius. One protected species observer would be located on the pile driver barge to perform monitoring.

Based on NMFS' recommendation, HSWAC would extend the exclusion zone to 1,000 m for all large whales from December 1 through March 31. The purpose would be to prevent Level B harassment of humpback whales during Hawaii's peak humpback whale season.

Once in-situ underwater sound measurements are taken, the exclusion zone may be adjusted accordingly so that marine mammals are not exposed to Level A harassment sound pressure levels. An exclusion zone does not need to be established during vibratory pile driving because source levels would not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a protected species observer sees a marine mammal approaching or entering the 91-m exclusion zone (or a large whale approaching or entering the 1,000-m exclusion zone from December 1 through March 31) prior to start of impact pile driving, the observer would notify the on-site project lead (or other authorized individual) who would then be required to delay pile driving until the marine mammal has moved away or if the animal has not been resighted within NMFS' recommended 15 minutes for pinnipeds or 60 minutes for

cetaceans. If a marine mammal is sighted entering or on a path toward the 91-m exclusion zone (or a large whale approaching or entering the 1,000-m exclusion zone from December 1 through March 31) during pile driving, pile driving would cease until that animal is on a path away from the exclusion zone or NMFS' recommended 15/60 minutes has lapsed since the last sighting.

Soft-Start Procedures

A "soft-start" technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. HSWAC would implement this technique by initiating pile driving at an energy level of about 40–60 percent. This level would be maintained for at least 5 minutes before gradually increasing the energy to full power. Soft-start procedures would be conducted prior to driving each pile if hammering ceases for more than 15 minutes.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

HSWAC would perform in-situ underwater sound monitoring during sheet pile and test pile driving operations to verify source levels and ensure that the harassment isopleths are not extending past the calculated distances described in this notice. If necessary, the 91-m exclusion zone would be expanded to include sound levels reaching 180 dB.

In addition to monitoring the 91-m exclusion zone, HSWAC would designate an observer to monitor the 160-dB zone around the sound source during all pipe pile driving (impact pile driving) operations. This observer would also be stationed on the pile driving rig and would be responsible for monitoring from the 91-m exclusion zone out to the Level B harassment zone at 1,000 m. The purpose of this observer would be to: (1) Conduct behavioral monitoring of marine mammals and record any Level B takes of marine mammals that occur during pipe pile driving operations; and (2) notify the onsite project lead (or other authorized individual) if a large whale is seen approaching or entering the 1,000-m exclusion zone from December 1 through March 31.

During at least 5 of the 16 days of sheet (i.e., vibratory) pile driving operations, HSWAC would designate two additional observers to monitor the 120-dB zone around the sound source. These observers would be stationed on a small power boat with an operator and would travel in a semi-circular route about 3.1 km from the sound source in order to observe and record any marine mammals that could be exposed to sound levels between 120–180 dB. Maximum travel speed would be 10 nautical miles per hour. Monitoring would begin 40 minutes prior to the start of sheet pile driving operations in order to observe whether any marine mammals in the area remained once pile driving operations started. Monitoring would continue during sheet pile driving operations and the observer would record all marine mammal sightings and behavior. At a minimum, monitoring of the 120-dB zone would occur on the first and second day of pile driving operations, followed by the fifth day, the tenth day, and fifteenth day. Observer data from the 120–180 dB area (for both pipe and sheet pile driving) would be used to validate take estimates and evaluate the behavioral impacts that pile driving has on marine mammals.

Protected species observers would be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, and range-finder) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving. If in-situ underwater sound monitoring indicates that threshold isopleths are greater than originally calculated, HSWAC would contact NMFS within 48 hours and make the necessary adjustments. Protected species observers would be required to submit a report to NMFS within 90 days of completion of pile driving. The report would include data from marine mammal sightings (such as species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike or gear interaction), HSWAC would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with HSWAC to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. HSWAC would not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that HSWAC discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), HSWAC would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Pacific Islands Regional Stranding Coordinator at 808–973–2941 (*David.Schofield@noaa.gov*). The report would include the same information identified in the paragraph above. Activities could continue while NMFS reviews the circumstances of the incident. NMFS would work with HSWAC to determine whether modifications in the activities are appropriate.

In the event that HSWAC discovers an injured or dead marine mammal, and the lead observer determines that the

injury or death is not associated with or related to the activities authorized in the lHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), HSWAC would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*), within 24 hours of the discovery. HSWAC would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the application and subsequent analysis, the impact of the described pile driving operations (taking into account proposed mitigation and monitoring measures) may result in, at most, short-term modification of behavior by small numbers of marine mammals. Marine mammals may avoid the area or temporarily change their behavior at time of exposure.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.*, 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sound (such as impact pile driving) and 120 dB for continuous sound (such as vibratory pile driving). Table 2 summarized the distances to NMFS' harassment thresholds from each type of pile driving activity. Based on this information, and considering the proposed mitigation measures, marine mammals would not likely be exposed to sound levels reaching 180 dB (Level A harassment) or higher.

HSWAC initially requested marine mammal takes for all species that could potentially be around Hawaii at any point during the year. However, as noted in the Description of Marine Mammals in the Area of the Specified Activity section of this document, some species only occur during winter months or are considered rare around Hawaii. Based on further consultation with the NMFS Pacific Islands Region and Pacific Islands Fisheries Science Center, NMFS is proposing to authorize the amount of take detailed in Table 4. These numbers are based on species density around Hawaii, taking habitat preference, seasonality, average group size, and number of pile driving days into consideration.

Where applicable, the density of each species was applied to the largest Level B harassment isopleth (4,700 m) and multiplied by the maximum number of pile driving days. For example, the density estimate for dwarf sperm whales is 0.31 animals within the 120 dB isopleth. This number was rounded to one and multiplied by the number of total pile driving days (72). For some species, only vibratory pile driving duration (16 days) was used to calculate take due to the following: (1) The Level B harassment zone for impact pile driving is relatively small (1,000 m); (2) impact pile driving would occur in relatively shallow water; and (3) some species prefer deep water and are unlikely to occur within the 1,000-m radius. Beaked whales were lumped together due to the difficulty in identifying them to the species level. Although vibratory pile driving would be prohibited from December through March, there is still a possibility of some large whales (humpbacks and minkes) being in the area during November or April. Therefore, based on the number of pile driving days, NMFS estimated that 16 humpbacks and 16 minke whales may be exposed to Level B harassment from vibratory pile driving during this time. The proposed take numbers in Table 4 are conservative in that they indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth (4,700 m).

TABLE 4—PROPOSED TAKES FOR MARINE MAMMALS DURING PILE DRIVING OPERATIONS

Species	Density within the project area	Expected take from vibratory pile driving (density × number of pile driving days)	Expected take from impact pile driving (density × number of pile driving days)	Proposed take
Beaked whales (Blainville's, Cuvier's, Longman's)	0.08	16	0	16
Bryde's whale	0.01	16	0	16
Dwarf sperm whale	0.31	16	56	72
False killer whale	0.05	16	0	16
Humpback whale	n/a	16	0	16
Melon-headed whale	0.10	16	0	16
Minke whale	n/a	16	0	16
Short-finned pilot whale	0.65	16	56	72
Pygmy killer whale	0.02	16	0	16
Pygmy sperm whale	0.13	16	0	16
Bottlenose dolphin	n/a			[1] 216
Fraser's dolphin	0.02	16	0	16
Risso's dolphin	0.11	16	0	16
Rough-toothed dolphin	0.35	16	0	16
Spinner dolphin	n/a			[2] 384
Pantropical spotted dolphin	0.87	16	0	16

TABLE 4—PROPOSED TAKES FOR MARINE MAMMALS DURING PILE DRIVING OPERATIONS—Continued

Species	Density within the project area	Expected take from vibratory pile driving (density × number of pile driving days)	Expected take from impact pile driving (density × number of pile driving days)	Proposed take
Monk seal	n/a			[3] 128

[1] There is no density estimate for bottlenose dolphins around Hawaii, so the minimum group size (3) was multiplied by the total number of pile driving days (72).

[2] There is no density estimate for spinner dolphins around Hawaii, so the average group size (24) was multiplied by the number of vibratory pile driving days (16). Spinner dolphins are seen more frequently than bottlenose dolphins, but are unlikely to occur within the Level B harassment zone during impact pile driving due to their preference for deeper waters.

[3] A maximum of four different monk seals have been seen hauled out around the south shore of Oahu, with one or two hauled out at any given time. NMFS Pacific Islands Fisheries Science Center estimates the population by multiplying beach counts by three. Therefore, we assume that 12 monk seals may reside around the south shore of Oahu with about four of them hauled out at any given time and others offshore traveling or foraging. The estimate of monk seals that may be in the water (8) was multiplied by the number of vibratory pile driving days (16). Impact pile driving was discounted because of the relatively small harassment zone and limited hours of activity (15–60 minutes/day).

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (PTS), serious injury, or mortality. Rather, NMFS expects that some marine mammals may be exposed to elevated sound levels which would result in Level B behavioral harassment. No impacts to marine mammal reproduction are expected because the closest known monk seal haul out is outside of the Level B harassment zone for in-air sound and proposed mitigation and monitoring measures would prevent harassment of humpback whales during the peak humpback whale season. During winter months, humpback whales migrate to Hawaii. Some level of socializing, breeding, and/or calving is thought to take place along the south of Oahu. The highest estimates of humpback whale surface density occur around Maui, Molokai, and Lanai; however, there are estimated areas of high humpback whale surface density around the other islands and humpbacks may be present around Oahu's south shore during winter months (Mobley *et al.*, 2001). While the Hawaiian Islands Humpback Whale National Marine Sanctuary includes part of Oahu's south shore, NMFS does not expect sound levels at or above 120 dB from pile driving to reach the sanctuary boundary. Otherwise, the proposed project area is not considered significant habitat for marine mammals.

Proposed mitigation and monitoring measures are expected to prevent impacts to cetacean reproduction. Marine mammals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels. NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment (e.g., avoidance or alteration of behavior). HSWAC expects that a maximum of 72 pile driving days may occur over a 1-year period. Marine mammal injury or mortality is not likely, as the 180-dB isopleth (NMFS' Level A harassment threshold for cetaceans) for the impact hammer is expected to be no more than 47 m from the sound source. The 190 dB isopleth (NMFS' Level A harassment threshold for pinnipeds) would be even smaller. Considering HSWAC's proposed mitigation measures, NMFS expects any changes to marine mammal behavior from pile driving noise to be temporary. The amount of take NMFS proposes to authorize is considered small (less than 12 percent of each species) relative to the estimated population sizes detailed in Table 3 (less than 12 percent for two species and less than seven percent for all others). There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis of the likely effects of pile driving on marine mammals and their habitat, and considering the proposed mitigation and monitoring measures, NMFS preliminarily determines that HSWAC's proposed pile driving activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The humpback whale and Hawaiian monk seal are the only marine mammals listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area during pile driving. Currently, no critical habitat has been designated for either species on or around Oahu. However, in June 2011, NMFS proposed revising the Hawaiian monk seal critical habitat by extending the current area around the Northwestern Hawaiian Islands and designating six new areas in the main Hawaiian Islands. This would include terrestrial and marine habitat from 5 m inland from the shoreline extending seaward to the 500-m depth contour around Oahu. The Hawaii insular stock of false killer whales is also currently proposed for listing under the ESA. Under section 7 of the ESA, the U.S. Army Corps of Engineers (as the federal permitting agency for HSWAC's proposed project) has begun consultation with NMFS Pacific Islands Region on the proposed seawater air conditioning project. NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the

Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a 1-year IHA and the potential issuance of future authorizations for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**). The U.S. Army Corps of Engineers also prepared an Environmental Impact Statement (EIS) to consider the environmental effects from the seawater air conditioning project.

Dated: July 18, 2012.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC111

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 5-year Letter of Authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally take, by Level B harassment only, California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*) incidental to professional fireworks displays within the MBNMS.

DATES: This authorization is effective from July 4, 2012, through July 3, 2017.

ADDRESSES: The LOA and supporting documentation are available for review in the Permits, and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by contacting the individual listed below (**FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) upon request, to allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued.

The Secretary shall grant the authorization for incidental taking if NMFS finds, after notice and opportunity for public comment, that the total of such taking during each five-year (or less) period concerned, will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species for subsistence uses. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and harbor seals, by Level B harassment, incidental to commercial fireworks displays within the Monterey Bay National Marine Sanctuary (MBNMS) became effective on July 4, 2012, and remain in effect until July 3, 2017. For detailed information on this action, please refer to the original **Federal Register** notice (77 FR 31537, May 29, 2012). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries.

Summary of Request

On July 7, 2011, we received a request for new regulations and a subsequent 5-year LOA that would authorize take of marine mammals incidental to fireworks displays at the MBNMS. We first issued an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued 5-year regulations governing the annual issuance of LOAs under section 101(a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Upon expiration of those regulations, NMFS issued MBNMS an IHA (76 FR 29196; May 20, 2011), which expired on July 3, 2012. A full description of fireworks displays within the MBNMS can be found in the proposed rule (77 FR 19976; April 3, 2012).

Under all previous authorizations, MBNMS conducted activities as described, implemented the required mitigation measures, and conducted the required monitoring. The total number of potentially harassed pinnipeds for all fireworks displays has been well below the authorized limits as stated in the authorizations.

No injuries or fatalities to marine mammals have been reported as resulting from any of the events. Hence, monitoring results have supported our findings that fireworks displays will result in no more than Level B behavioral harassment of small numbers of California sea lions and harbor seals and that the effects will be limited to short-term behavioral changes, including temporary abandonment of haul-out areas to avoid the sights and sounds of commercial fireworks.

Authorization

NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to coastal commercial fireworks displays within the Sanctuary. Issuance of this LOA is based on the results of past monitoring reports which verify that the total number of potentially harassed sea lions and harbor seals was well below the authorized limits. Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the

availability of the affected marine mammal stock for subsistence uses. No injury, serious injury, or mortality of affected species is anticipated.

Dated: July 17, 2012.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–17970 Filed 7–23–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Submission for OMB Emergency Review; Comment Request: Exemptive Order Regarding Compliance With Certain Swap Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") has submitted a request for review and approval of an information collection request ("ICR") titled "Exemptive Order Regarding Compliance with Certain Swap Regulations," utilizing emergency review procedures in accordance with the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.*, and Office of Management and Budget ("OMB") regulation 5 CFR 1320.13. The Commission is requesting that this information collection be approved by August 8, 2012. The Commission is initially requesting a six-month approval for this collection. The Commission plans to follow this emergency request with a request for a 3-year approval, through OMB's normal clearance procedures of OMB regulation 5 CFR 1320.10.

DATES: OMB approval has been requested by August 8, 2012. Comments must be submitted to OMB on or before August 23, 2012.

ADDRESSES: Submit written comments on the burden estimated or any other aspect of the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503 or via electronic mail to *oira.submission@omb.eop.gov*. Please refer to Comments Proposed New Information Collection—Exemptive Order Regarding Compliance with Certain Swap Regulations in any correspondence. Comments also may be submitted to the Commission by any of the following methods:

- The Agency's Web site, at *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.*

Please submit your comments to the CFTC using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov*. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Laura B. Badian, Counsel, at 202–418–5969, *lbadian@cftc.gov*, Gail Scott, Counsel, at 202–418–5139, *gscott@cftc.gov*, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has submitted a request for review and approval of an ICR titled "Exemptive Order Regarding Compliance with Certain Swap Regulations," utilizing emergency review procedures in accordance with the PRA, 44 U.S.C. 3501 *et seq.*, and OMB regulation 5 CFR 1320.13. The Commission is initially requesting a six-month approval for this collection. The Commission plans to follow this emergency request with a request for a 3-year approval, through OMB's normal clearance procedures of OMB regulation 5 CFR 1320.10.

I. Background on Proposed Information Collection Activities

A. Overview

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Public Law 111–203, 124 Stat. 1376 (2010) amended the Commodity Exchange Act ("CEA") to establish a new statutory framework for swaps. To implement the Dodd-Frank Act, the Commission has promulgated, or proposed, rules and regulations pursuant to the various new provisions of the CEA, including those specifically applicable to swap dealers ("SDs") and major swap participants ("MSPs"). The Dodd-Frank Act requires all swap dealers and major swap participants to be registered with the Commission. It contains definitions of "swap," "swap dealer" and "major swap participant" but directs the Commission to adopt regulations that further define those terms. On May 23, 2012, the Commission adopted final regulations further defining the terms "swap dealer" and "major swap participant." On July 10, 2012, the Commission adopted final regulations further defining the term "swap" and "security-based swap" in sections 712(d) and 721(c) of the Dodd-Frank Act (the "Products Definitions Final Rule").[2] Registration of SDs and MSPs will become mandatory on the later of the effective date or the compliance date of the Products Definitions Final Rule.

Recently, the Commission approved for publication a proposed interpretive guidance and policy statement ("Cross-Border Interpretive Guidance") on the application of the CEA's swap provisions and the implementing Commission regulations to cross-border activities and transactions.[3] The Commission is not expected to adopt the Cross-Border Interpretive Guidance prior to the date that registration of SDs and MSPs become mandatory (*i.e.*, the later of the effective date or compliance date) of the Products Definitions Final Rule.

Because the Cross-Border Interpretive Guidance is not expected to be adopted before the date upon which each then existing SD and MSP must apply for registration, the Commission has proposed to provide temporary relief under the Exemptive Order Regarding Compliance with Certain Swap Regulations ("Exemptive Order") pursuant to section 4(c) of the CEA.[4] Specifically, the proposed relief would allow non-U.S. SDs and non-U.S. MSPs to delay compliance with certain Entity-Level Requirements (as defined in the Exemptive Order) of the CEA (and

[1] *See* 17 CFR 145.9.

[2] *See* CFTC and Securities and Exchange Commission ("SEC"), Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping (July 10, 2012), available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister071012c.pdf*.

[3] *See* Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41213, July 12, 2012.

[4] *See* Exemptive Order Regarding Compliance with Certain Swap Regulations, 77 FR 41110, July 12, 2012.

Commission regulations promulgated thereunder), subject to specified conditions. Additionally, with respect to transaction-level requirements of the CEA (and Commission regulations promulgated thereunder), the relief would allow non-U.S. SDs and non-U.S. MSPs, as well as foreign branches of U.S. SDs and MSPs, to comply only with those requirements as may be required in the home jurisdiction of such non-U.S. SDs and non-U.S. MSPs (or in the case of foreign branches of a U.S. SD or U.S. MSP, the foreign location of the branch) for swaps with non-U.S. counterparties. This relief would become effective concurrently with the date upon which SDs and MSPs must first apply for registration and expire 12 months following the publication of the proposed Exemptive Order in the **Federal Register**. Finally, U.S. SDs and U.S. MSPs may delay compliance with certain entity-level requirements of the CEA (and Commission regulations promulgated thereunder) from the date upon which SDs and MSPs must apply for registration until January 1, 2013.

The conditions for relief set forth in the Exemptive Order, which are discussed below, have PRA implications.

Under the PRA, 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 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 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. If adopted, the collection of information would be required in order for the registrant to rely on the exemptive relief. The Commission would protect proprietary information in accordance with the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, § 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." [5] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

B. Conditions to Relief

Under the proposed Exemptive Order, a non-U.S. SD or non-U.S. MSP seeking relief from the specified Entity-Level Requirements must satisfy certain conditions. First, the non-U.S. person that is required to register as an SD or MSP must apply to become registered as such when registration is required. Second, within 60 days of applying for registration, the non-U.S. applicant would be required to submit to the National Futures Association ("NFA") a compliance plan addressing how it plans to comply, in good faith, with all applicable requirements under the CEA and related rules and regulations upon the effective date of the Cross-Border Interpretive Guidance.

At a minimum, such plan would provide, for each Entity-Level and Transaction-Level Requirement, a description of: (1) Whether the non-U.S. SD or non-U.S. MSP plans to comply with each of the Entity-Level and Transaction-Level Requirements that are in effect at such time or plans to seek a comparability determination and rely on compliance with one or more of the requirements of the home jurisdiction, as applicable; and (2) to the extent that the non-U.S. SD or non-U.S. MSP would seek to comply with one or more of the requirement(s) of the home jurisdiction, a description of such requirement(s). Such person would be permitted to modify or alter the compliance plan as appropriate, provided that they submit any such amended plan to NFA.

Additionally, a U.S. SD or U.S. MSP whose foreign branch seeks to rely on the exemptive relief with respect to swaps with non-U.S. counterparties must submit a compliance plan addressing how it plans to comply, in good faith, with all applicable Transaction-Level Requirements under the CEA upon the expiration of the proposed Exemptive Order.

The Commission anticipates that compliance plans would be updated on a periodic basis as new regulations are adopted and come into effect. Such updates would be submitted to NFA. Any such submission would identify the name of the registrant, the fact that the submission is made in reliance upon and pursuant to the exemptive relief, and contact name and information.

II. Purpose and Proposed Use of Information Collected

The proposed information collection ensures that non-U.S. persons claiming the exemption would be actively and demonstrably considering and planning for compliance with the Entity-Level and Transaction-Level Requirements under the CEA, as may be applicable. In addition, the proposed information collection ensures that foreign branches of U.S. SDs and U.S. MSPs claiming the exemption with respect to Transaction-Level Requirements under the CEA are similarly making a good-faith effort to comply with these requirements.

Because the Commission's proposed Cross-Border Interpretive Guidance is not expected to be adopted before the date upon which each then existing SD and MSP must apply for registration, the Commission has proposed to provide temporary relief for certain cross-border activities and transactions under the Exemptive Order pursuant to section 4(c) of the CEA.[6] The Commission requested OMB approval under the PRA emergency clearance process for the subject information collection because the exemptive relief process is essential to the mission of the agency and must be in place well before the date the registration requirements for SDs and MSPs under other Dodd-Frank Act implementing regulations become mandatory. Approval through the normal clearance procedures would prevent the Commission from collecting the subject information and providing for the temporary relief. Therefore, the agency cannot reasonably comply with the normal clearance procedures under 5 CFR Part 1320 because public harm is reasonably likely to result if normal clearance procedures are followed, and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information.

III. Burden Statement

The Commission estimates that 60 to 125 SDs and MSPs (including 40 to 80 non-U.S. SDs and MSPs and 20 to 45 U.S. SDs and MSPs) will submit initial compliance plans. The Commission further estimates that, on average, between 60 and 125 SDs and MSPs (including 40 to 80 non-U.S. SDs and MSPs and 20 to 45 U.S. SDs and MSPs) will prepare and submit one amendment annually.

The Commission anticipates that compliance plans would be updated on a periodic basis as new regulations (including in foreign jurisdictions) are adopted and come into effect. It is possible that one or more amendments will be submitted within the same year as the initial compliance plan, but it is difficult to predict when new regulations (including in foreign

[5] 7 U.S.C. 12(a)(1).

[6] *See* Exemptive Order Regarding Compliance with Certain Swap Regulations, 77 FR 41110, July 12, 2012.

jurisdictions) will be adopted and become effective. The Commission is therefore providing estimates based on an initial submission and one amendment on the assumption that one amendment will be filed in the same year as the initial submission.

The respondent burden hour costs for this collection for non-U.S. SDs and MSPs is estimated on average to be $31,190 per submission of an initial compliance plan (rounded to the nearest dollar), and an additional $31,190 per amendment. The aggregate cost burden for non-U.S. SDs and MSPs (which the Commission estimates to be 40 to 80 non-U.S. SDs/MSPs) is estimated to be approximately $1,247,600 to $2,495,200 for initial plans and $1,247,600 to $2,495,200 for amendments.

The respondent burden hour costs for this collection for U.S. SDs and MSPs is estimated on average to be $18,714 per submission of an initial compliance plan and an additional $18,714 per amendment. The aggregate cost burden for U.S. SDs and MSPs (which the Commission estimates to be 20 to 45 U.S. SDs/MSPs) is estimated to be approximately $374,280 to $842,130 for initial plans and $374,280 to $842,130 for amendments.

The aggregate cost burden for all SDs and MSPs (both U.S. and non-U.S., which the Commission estimates to be 60 to125 SDs/MSPs) is estimated to be approximately $1,621,880 to $3,337,330 for initial compliance plans and $1,621,880 to $3,337,330 for amendments. The aggregate cost burden for all SDs and MSPs (both U.S. and non-U.S.) for both initial compliance plans and one amendment is estimated to be approximately $3,243,760 to $6,674,660.

The Commission estimates the average burden of this collection of information as follows:

ITEMIZED BURDEN HOURS AND COST TABLE

	Number of registrants estimated to submit plans	Number of plans per registrant	Aggregate number of responses (Column 1 × Column 2)	Average number of hours per response	Cost burden per hour	Cost burden per plan	Aggregate cost burden (Based on Min-Max Range in Column 3 × Column 6)
	1	2	3	4	5	6	7
1. Initial Submission by a non-U.S. SD or MSP.	40 to 80 non-U.S. SDs and MSPs[7].	1	40 to 80	[8][9]70	[10]$445.57	[11]$31,190	$1,247,600 to $2,495,200.
2. Amended Submission by a non-U.S. SD or MSP.	40 to 80 non-U.S. SDs and MSPs.	1 (assumes that on average, each non-U.S. applicant will prepare and submit one amendment annually)[12].	40 to 80	[13][14]70	[15]445.57	[18]31,190	$1,247,600 to $2,495,200.
3. Initial Submission by a U.S. SD or MSP.	20 to 45 U.S. SDs and MSPs[17].	1	20 to 45	[18][19]42	[20]445.57	[21]18,714	$374,280 to $842,130.
4. Amended Submission by a U.S. SD or MSP.	20 to 45 U.S. SDs and MSPs.	1 (assumes that on average, each U.S. applicant will prepare and submit one amendment annually)[22].	20 to 45	[23][24]42	[25]445.57	[26]18,714	$374,280 to $842,130.

[7] The Commission currently estimates that approximately 125 entities will be covered by the definitions of the terms "swap dealer" and "major swap participant." *See* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"; Final Rule, 77 FR 30596, 30713 (May 23, 2012). However, not all of these entities are eligible for or will seek exemptive relief. Although there is significant uncertainty in the number of swap entities that will seek to register as SDs and MSPs, as well as the number of swap entities that will submit a compliance plan in order to obtain exemptive relief, the Commission believes it is reasonable to estimate that between 40 and 80 non-U.S. SDs and MSPs will submit compliance plans.

[8] This estimate is based on the hourly cost of personnel that are capable of evaluating both Commission and home country regulations in light of the non-U.S. persons' operations. Although different registrants may choose to staff preparation of the compliance plan with different personnel, Commission staff estimates that, on average, an initial compliance plan could be prepared and submitted with 70 hours of attorney time, as follows: 10 hours for a senior attorney at $830/hour, 30 hours for a mid-level attorney at $418/hour, and 30 hours for a junior attorney at $345/hour. The total cost of a submission, rounded to the nearest dollar, is estimated to be $31,190. To estimate the hourly cost of senior and junior-level attorney time, Commission staff consulted with a law firm that has substantial expertise in advising clients on similar regulations. For the hourly cost of the mid-level attorney, Commission staff reviewed data contained in Securities Industry and Financial Markets Association ("SIFMA"), Report on Management and Professional Earnings in the Securities Industry, Oct. 2011, for New York, and adjusted by a factor for overhead and other benefits, which the Commission has estimated to be 1.3.

[9] The aggregate hourly burden for initial submissions (Column 3 × Column 4) would be 2,800 to 5,600 hours.

[10] *See* note 8, *supra*.

[11] *See* note 8, *supra*.

[12] The Commission anticipates that compliance plans would be updated on a periodic basis as new regulations (including in foreign jurisdictions) are adopted and come into effect. It is possible that one or more amendments will be submitted within the same year as the initial compliance plan, but it is difficult to predict when new regulations (including in foreign jurisdictions) will be adopted and become effective. The Commission is therefore providing estimates based on an initial submission and one amendment on the assumption that one amendment will be filed in the same year as the initial submission.

[13] The Commission estimates that in most cases the cost of submitting a revised plan or plans will be the same as the cost of preparing and submitting the initial plan. *See supra* note 8 for additional information.

[14] The aggregate hourly burden for amended submissions (Column 3 × Column 4) would be 2,800 to 5,600 hours.

[15] *See* note 8, *supra*.

[16] *See* note 8, *supra*.

[17] Although there is significant uncertainty in the number of swap entities that will seek to register as SDs and MSPs, as well as the number of swap entities that will submit a compliance plan in order to obtain exemptive relief, the Commission estimates that 20 to 45 U.S. SDs or U.S. MSPs whose foreign branch seeks to rely on the exemptive relief with respect to swaps with non-U.S. counterparties will submit a compliance plan.

[18] This estimate is based on the hourly cost of personnel that are capable of evaluating both Commission and home country regulations in light of the U.S. persons' foreign branch operations. Although different registrants may choose to staff preparation of the compliance plan with different personnel, Commission staff estimates that, on average, an initial compliance plan could be prepared and submitted by U.S. SDs and MSPs with 42 hours of attorney time, as follows: 6 hours for a senior attorney at $830/hour, 18 hours for a mid-level attorney at $418/hour, and 18 hours for a junior attorney at $345/hour. The total dollar cost of a submission is estimated to be $18,714, at a blended hourly rate of $445.57 per hour. To estimate the hourly cost of senior and junior-level attorney time, Commission staff consulted with a law firm that has substantial expertise in advising clients on similar regulations. For the hourly cost of the mid-level attorney, Commission staff reviewed data contained in Securities Industry and Financial Markets Association ("SIFMA"), Report on Management and Professional Earnings in the Securities Industry, Oct. 2011, for New York, and adjusted by a factor for overhead and other benefits, which the Commission has estimated to be 1.3.

[19] The aggregate hourly burden for initial submissions (Column 3 × Column 4) would be 840 to 1,890 hours.

[20] *See* note 18, *supra*.

[21] *See* note 18, *supra*.

[22] The Commission anticipates that compliance plans would be updated on a periodic basis as new regulations (including in foreign jurisdictions) are adopted and come into effect. It is possible that one or more amendments will be submitted within the same year as the initial compliance plan, but it is difficult to predict when new regulations (including in foreign jurisdictions) will be adopted and become effective. The Commission is therefore providing estimates based on an initial submission and one amendment on the assumption that one amendment will be filed in the same year as the initial submission.

[23] The Commission estimates that in most cases the cost of submitting a revised plan or plans will be the same as the cost of preparing and submitting the initial plan. *See supra* note 18 for additional information.

[24] The aggregate hourly burden for amended submissions (Column 3 × Column 4) would be 840 to 1,890 hours.

[25] The Commission estimates that in most cases the cost of submitting a revised plan or plans will be the same as the cost of preparing and submitting the initial plan. *See* note 18, *supra*.

[26] The Commission estimates that in most cases the cost of submitting a revised plan or plans will be the same as the cost of preparing and submitting the initial plan. *See* note 18, *supra*.

TOTAL AGGREGATE BURDEN HOURS AND COSTS TABLE

	Aggregate hours, initial plan	Aggregate hours, amended plan	Total hours, initial and amended plans (Columns 1 + 2)	Aggregate costs, initial plan	Aggregate costs, amended plan	Total costs, initial and amended plans (Columns 4 + 5)
	1	2	3	4	5	6
1. Non-U.S. SDs and MSPs.	2,800 to 5,600 hrs ...	2,800 to 5,600 hrs ...	5,600 to 11,200 hrs	$1,247,600 to $2,495,200.	$1,247,600 to $2,495,200.	$2,495,200 to $4,990,400.
2. U.S. SD or MSP	840 to 1,890 hrs	840 to 1,890 hrs	1,680 to 3,780 hrs ...	$374,280 to $842,130.	$374,280 to $842,130.	$748,560 to $1,684,260.
3. All SDs and MSPs (Rows 1 + 2).	3,640 to 7,490 hrs ...	3,640 to 7,490 hrs ...	7,280 to 14,980 hrs	$1,621,880 to $3,337,330.	$1,621,880 to $3,337,330.	$3,243,760 to $6,674,660.

Initial Compliance Plan—Cost Burden Estimates for non-U.S. SDs and MSPs:

Estimated number of respondents/affected entities: 40 to 80.

Estimated number of responses per entity: 1.

Estimated aggregate number of responses: 40 to 80.

Estimated total average burden hour per respondent: 70 hours.

Estimated total average burden hour cost burden for all respondents: $1,247,600 to $2,495,200 (average of $1,871,400).

Amended Compliance Plan—Cost Burden Estimates for non-U.S. SDs and MSPs:

Estimated number of respondents/affected entities: 40 to 80.

Estimated number of amended plans per registrant: 1 annually.

Estimated aggregate number of responses: 40 to 80.

Estimated total average burden hour per respondent: 70 hours.

Estimated total average burden hour cost burden for all respondents: $1,247,600 to $2,495,200 (average of $1,871,400).

Initial Compliance Plan—Cost Burden Estimates for U.S. SDs and MSPs:

Estimated number of respondents/affected entities: 20 to 45.

Estimated number of responses per entity: 1.

Estimated aggregate number of responses: 20 to 45.

Estimated total average burden hour per respondent: 42 hours.

Estimated total average burden hour cost for all respondents: $374,280 to $842,130 (average of $608,205).

Amended Compliance Plan—Cost Burden Estimates for U.S. SDs and MSPs:

Estimated number of respondents/affected entities: 20 to 45.

Estimated number of amended plans per registrant: 1 annually.

Estimated aggregate number of responses: 20 to 45.

Estimated total average burden hour per respondent: 42 hours.

Estimated total average burden hour cost burden for all respondents: $374,280 to $842,130 (average of $608,205).

Aggregate Burden Hours and Costs for all SDs and MSPs (U.S. and non-U.S.):

Estimated number of respondents/affected entities: 60 to 125

Estimated number of plans per registrant: initial and one amended (estimates are provided based on the assumption that one amendment will be filed in the same year as the initial submission).

Estimated aggregate hourly burden (initial plans): 3,640 to 7,490 hrs.

Estimated aggregate hourly burden (amendments): 3,640 to 7,490 hrs

Estimated aggregate hourly burden (initial plans and one amendment): 7,280 to 14,980 hours.

Estimated aggregate costs (initial plan): $1,621,880 to $3,337,330.

Estimated aggregate costs (amendments): $1,621,880 to $3,337,330.

Estimated aggregate costs (initial plans and one amendment): $3,243,760 to $6,674,660 (average of $4,959,210).

Frequency of collection (for all of the above categories): Occasional.

There are no capital costs or operating and maintenance costs associated with this collection.

IV. Request for Public Comments

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by August 23, 2012. The OMB is particularly interested in comments that:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Dated: July 18, 2012.

David Stawick,

Secretary of the Commission.

[FR Doc. 2012–17919 Filed 7–23–12; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday August 3, 2012.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event

that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–18044 Filed 7–20–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday, August 10, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–18045 Filed 7–20–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday August 17, 2012.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–18046 Filed 7–20–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday, August 31, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–18048 Filed 7–20–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday August 24, 2012.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–18047 Filed 7–20–12; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Environmental Impact Statement for Naval Air Station Key West Airfield Operations, Florida

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published in the **Federal Register** by the U.S. Environmental Protection Agency on June 29, 2012 (77 FR 126) for the Department of the Navy's (DoN) Draft Environmental Impact Statement (EIS) for Naval Air Station (NAS) Key West Airfield Operations, Florida. The public review period ends on August 13, 2012. This notice announces a 15-day extension of the public comment period until August 28, 2012.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Southeast, NAS Key West Air Operations EIS Project Manager, P.O. Box 30, Building 903, NAS Jacksonville, FL 32212.

SUPPLEMENTARY INFORMATION: This notice announces a 15-day extension of the public comment period until August 28, 2012. Comments may be submitted in writing to Naval Facilities Engineering Command Southeast, NAS Key West Air Operations EIS Project Manager, P.O. Box 30, Building 903, NAS Jacksonville, FL 32212 or electronically via the project Web site (*http://www.keywesteis.com*). All written comments must be postmarked or received (online) by August 28, 2012, to ensure they become part of the official record. All comments will be addressed in the Final EIS.

Copies of the Draft EIS are available for public review at the following libraries:

1. Key West Public Library, 700 Fleming Street, Key West, Florida 33040.

2. Florida Keys Community College Library, 5901 College Road, Building A (2nd Floor), Key West, Florida 33040.

Copies of the Draft EIS are available for electronic viewing or download at *http://www.keywesteis.com.* A paper copy of the Executive Summary or a

single compact disc of the Draft EIS will be made available upon written request.

J. M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–17983 Filed 7–23–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Special Education and Rehabilitative Services; Needs Assessment, Workplan, and Evaluation Guide for the Technical Assistance and Continuing Education Program

SUMMARY: Technical Assistance and Continuing Education (TACE) Centers are required to conduct needs assessment of state vocational rehabilitation agencies and their partners in their regions, create workplans to address the needs they identify, and evaluate the technical assistance and continuing education provided to address those needs. This guide establishes the requirements for the information to be reported about those activities.

DATES: Interested persons are invited to submit comments on or before September 24, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 04891. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Needs Assessment, Workplan, and Evaluation Guide for the Technical Assistance and Continuing Education Program.

OMB Control Number: 1820–0690.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 817.

Abstract: The Office of Special Education and Rehabilitative Services within the U.S. Department of Education funded ten regional TACE Centers between September and December 2008 that currently and will continue to provide technical assistance and continuing education to state vocational rehabilitation (VR) agencies that provide VR and independent living services to individuals with disabilities under the Rehabilitation Act of 1973, as amended and organizations that support state VR agencies (called partners).

Dated: July 18, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–18020 Filed 7–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Federal Student Aid; William D. Ford Federal Direct Loan Program General Forbearance Request

SUMMARY: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request forbearance on their loans when they are willing but unable to make their currently scheduled monthly payments because of a temporary financial hardship.

DATES: Interested persons are invited to submit comments on or before September 24, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 04892. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be

processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program General Forbearance Request.

OMB Control Number: 1845–0031.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 1,308,453.

Total Estimated Number of Annual Burden Hours: 261,691.

Abstract: Section 428(c)(3) of the Higher Education Act of 1965, as amended (the HEA) provides that under certain circumstances, a borrower who receives a loan through the Federal Family Education Loan (FFEL) Program is entitled to a forbearance. Section 455(a)(1) of the HEA provides that unless otherwise specified, loans made under the William D. Ford Federal Direct Loan Program are to have the same terms, conditions, and benefits as loans made under the FFEL Program. A forbearance is an arrangement to postpone or reduce the amount of a borrower's monthly loan payment for a limited and specific time period.

Dated: July 18, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–18023 Filed 7–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Innovative Approaches to Literacy Program (CFDA 84.215G); Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On July 11, 2012, we published in the **Federal Register** (77 FR 40866) a notice inviting applications for new awards using fiscal year (FY) 2012 funds for the Innovative Approaches to Literacy Program (2012 notice). The 2012 notice erroneously listed deadline dates for intergovernmental review under Executive Order 12372 and its implementing regulations in 34 CFR part 79. The Secretary had decided to waive the EO 12372 review of the July 11, 2012 notice, as authorized under part 79, but the notice did not reflect that decision. The Secretary made the decision to waive this review because we would otherwise not be able to make timely grant awards for the Innovative Approaches to Literacy Program for FY 2012. We are correcting the 2012 notice to remove the requirement that applicants submit their applications for intergovernmental review.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, U.S. Department of Education, 400 Maryland Avenue SW., room 3E246, Washington, DC 20202–6200. Telephone: 202–260–2514 or by e-mail: *Peter.Eldridge@ed.gov.*

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

SUPPLEMENTARY INFORMATION: We make the following corrections:

1. On page 40867, first column, we are removing the third sentence, which reads "Deadline for Intergovernmental Review: October 9, 2012".

2. On page 40870, second column, under the heading "3. Submission Dates and Times," we are removing the last sentence, which reads "Deadline for Intergovernmental Review: October 9, 2012".

3. On page 40870, second column, under the heading *"4. Intergovernmental Review"*, we are removing the second sentence.

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) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: July 19, 2012.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–18089 Filed 7–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–482–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Application

Take notice that on July 6, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place the northern portion of its Line No. 523M–100, and one associated inactive offshore supply pipeline, Line No. 523M–6300 and associated appurtenances located from the Ship Shoal Area in federal waters extending northerly to onshore in Terrebonne Parish, Louisiana. The facilities to be abandoned include approximately 32 miles of 26-inch pipeline, and 5.19 miles of 6-inch pipeline, as well as associated appurtenances, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, L.L.C. 1001 Louisiana Street, Houston, Texas 77002, or telephone (713) 420–3299, or facsimile (713) 420–1605, or by email at *tom_joyce@kindermorgan.com;* Susan T. Halbach, Assistant General Counsel, Tennessee Gas Pipeline Company, L.L.C. 1001 Louisiana Street, Houston, Texas 77002, or telephone (713) 420–5751, or by email

susan_halbach@kindermorgan.com; or Debbie Kalisek, Regulatory Analyst, Tennessee Gas Pipeline Company, L.L.C. 1001 Louisiana Street, Houston, Texas 77002, or telephone at (713) 420–3292, or facsimile at (713) 420–1605, or by email *debbie_kalisek@kindermorgan.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: August 7, 2012.

Dated: July 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17922 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1590–000.
Applicants: Entergy Arkansas, Inc.
Description: Refund Report ER12–1590—AECI and Cargill PTP to be effective 4/20/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5028.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–1876–001.
Applicants: Alabama Power Company.
Description: Blountstown NITSA Amendment Filing to be effective 5/1/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5035.
Comments Due: 5 p.m. ET 7/24/12.
Docket Numbers: ER12–2067–001.
Applicants: MidAmerican Energy Company.
Description: Revised Certificates of Concurrence—ITC Midwest to be effective 7/3/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5020.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2249–000.
Applicants: Pacific Gas and Electric Company.
Description: CCSF IA Procedures Amended in 2012 to be effective 8/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5000.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2249–001.
Applicants: Pacific Gas and Electric Company.
Description: Errata to Filing to Amend the CCSF IA Procedures to be effective 9/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5048.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2250–000.
Applicants: Public Power & Utility of New Jersey, LLC.
Description: Application for Market-Based Rate Authority to be effective 8/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5003.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2251–000.
Applicants: Public Power & Utility of NY, Inc.
Description: Application for Market-Based Rate Authority to be effective 8/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5004.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2252–000.
Applicants: Public Power, LLC of Pennsylvania.
Description: Application for Market-Based Rate Authority to be effective 8/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5005.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2253–000.
Applicants: Public Power & Utility of Maryland, LLC.
Description: Application for Market-Based Rate Authority to be effective 8/17/2012.

Filed Date: 7/17/12.
Accession Number: 20120717–5006.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2254–000.
Applicants: Alabama Power Company.
Description: SWE (Hartford) NITSA Filing to be effective 7/1/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5040.
Comments Due: 5 p.m. ET 8/7/12.
Docket Numbers: ER12–2255–000.
Applicants: Alabama Power Company.
Description: 2011 Hartford NITSA Termination Filing to be effective 6/30/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5047.
Comments Due: 5 p.m. ET 8/7/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18011 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–250–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River's Response to June 15, 2012 Order.
Filed Date: 7/16/12.
Accession Number: 20120716–5144.
Comments Due: 5 p.m. ET 7/30/12.
Docket Numbers: RP12–863–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance with CP12–38–000 to be effective 8/17/2012.
Filed Date: 7/12/12.
Accession Number: 20120712–5045.
Comments Due: 5 p.m. ET 7/24/12.
Docket Numbers: RP12–864–000.
Applicants: LA Storage, LLC.
Description: LA Storage, LLC Gas Tariff Revised Section 4.1—ACA to be effective 8/1/2012.
Filed Date: 7/12/12.
Accession Number: 20120712–5073.
Comments Due: 5 p.m. ET 7/24/12.
Docket Numbers: RP12–865–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—July 12, 2012 Negotiated Rate Agreements to be effective 7/13/2012.
Filed Date: 7/12/12.
Accession Number: 20120712–5096.
Comments Due: 5 p.m. ET 7/24/12.
Docket Numbers: RP12–866–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: 2012–07–16 Non-Conforming K's Mieco and CIMA to be effective 7/17/2012.
Filed Date: 7/16/12.
Accession Number: 20120716–5104.
Comments Due: 5 p.m. ET 7/30/12.
Docket Numbers: RP12–867–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: By Displacement Only to be effective 7/17/2012.
Filed Date: 7/16/12.
Accession Number: 20120716–5117.
Comments Due: 5 p.m. ET 7/30/12.
Docket Numbers: RP12–868–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska Negotiated to be effective 7/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5031.
Comments Due: 5 p.m. ET 7/30/12.
Docket Numbers: RP12–869–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Tenaska Neg Rate to be effective 7/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5032.
Comments Due: 5 p.m. ET 7/30/12.
Docket Numbers: RP12–870–000.
Applicants: Petal Gas Storage, L.L.C.
Description: Non-conforming Agreement Filing to be effective 7/17/2012.
Filed Date: 7/17/12.
Accession Number: 20120717–5049.
Comments Due: 5 p.m. ET 7/30/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–854–001.
Applicants: Honeoye Storage Corporation.
Description: Priority Non-Firm Storage Service Filing Amendment to be effective 8/1/2012.
Filed Date: 7/12/12.
Accession Number: 20120712–5125.
Comments Due: 5 p.m. ET 7/24/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18013 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–120–000.
Applicants: Pacific Wind, LLC, Pacific Wind Lessee, LLC.
Description: Application for Approval under Section 203 of the Federal Power Act and Requests for Expedited Consideration and Confidential Treatment of Pacific Wind, LLC, and Pacific Wind Lessee, LLC.
Filed Date: 7/16/12.
Accession Number: 20120716–5156.
Comments Due: 5 p.m. ET 8/6/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2460–001; ER10–2461–001; ER12–682–002; ER10–2463–001; ER11–2201–005; ER12–1311–001; ER10–2466–002; ER11–4029–001.

Applicants: Evergreen Wind Power, LLC, Canandaigua Power Partners, LLC, Evergreen Wind Power III, LLC, Stetson Wind II, LLC, Vermont Wind, LLC, Stetson Holdings, LLC, Erie Wind, LLC, Canandaigua Power Partners II, LLC.

Description: Notice of Change in Status of Canandaigua Power Partners, LLC, et al.

Filed Date: 7/16/12.

Accession Number: 20120716–5158.

Comments Due: 5 p.m. ET 8/6/12.

Docket Numbers: ER11–4267–001; ER11–4270–001; ER11–4269–001; ER11–4268–001; ER11–113–001; ER10–2682–001.

Applicants: Algonquin Northern Maine Gen Co., Algonquin Tinker Gen Co., Algonquin Energy Services Inc., Granite State Electric Company, Sandy Ridge Wind, LLC, Algonquin Windsor Locks LLC.

Description: Notice of Change in Status of Algonquin Energy Services Inc., et al.

Filed Date: 7/16/12.

Accession Number: 20120716–5149.

Comments Due: 5 p.m. ET 8/6/12.

Docket Numbers: ER12–2245–000.

Applicants: California Independent System Operator Corporation.

Description: 2012–07–16 CAISO CRR Enhancement and Clarification Amendment to be effective 9/15/2012.

Filed Date: 7/16/12.

Accession Number: 20120716–5121.

Comments Due: 5 p.m. ET 8/6/12.

Docket Numbers: ER12–2246–000.

Applicants: New England Power Company.

Description: Notice of Effective Date of Service Agreement No. 6 to be effective 7/3/2012.

Filed Date: 7/16/12.

Accession Number: 20120716–5128.

Comments Due: 5 p.m. ET 8/6/12.

Docket Numbers: ER12–2247–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: SA 2430 TVA–IPL FCA F098 7–16–2012 to be effective 7/17/2012.

Filed Date: 7/16/12.

Accession Number: 20120716–5132.

Comments Due: 5 p.m. ET 8/6/12.

Docket Numbers: ER12–2248–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits tariff filing per 35.13(a)(2)(iii): OATT 2012 Depreciation Update to be effective 6/1/2012.

Filed Date: 7/16/12.

Accession Number: 20120716–5137.

Comments Due: 5 p.m. ET 8/6/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–18010 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–13123–002–CA]

Eagle Mountain Pumped Storage Hydroelectric Project, Eagle Crest Energy; Notice of Meeting With the Bureau of Land Management

a. *Date and Time of Meeting:* Wednesday, August 15, 2012, at 9 a.m. (Pacific Time) and Thursday, August 16, 2012, at 9 a.m. (if needed).

b. *Location:* Hilton Palm Springs, 400 East Tahquitz Canyon Way, Palm Springs, California 92262–6605, Telephone: (760) 320–6868.

c. *FERC Contact:* Kenneth Hogan, (202) 502–8434: *Kenneth.Hogan@ferc.gov.*

d. *Purpose of the Meeting:* Commission staff will meet with the staff of the Bureau of Land Management to improve agency coordination and discuss the agencies' overlapping jurisdictions (pursuant to the Federal Land Policy and Management Act and the Federal Power Act), on the Eagle Mountain Pumped Storage Hydroelectric Project.

e. All local, state, and federal agencies, tribes, and interested parties, are hereby invited to observe the meeting in person.

Dated: July 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17920 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–12–000]

Coordination Between Natural Gas and Electricity Markets; Supplemental Notice of Technical Conferences

On July 5, 2012, the Federal Energy Regulatory Commission (Commission) issued a notice scheduling a series of regional technical conferences on the issue of gas-electric coordination.[1] This supplemental notice contains additional information regarding the time and venue of each conference. The conferences are free of charge and open to the public. Commission members may participate in the conferences.

The regional technical conferences will be held on the following dates, at the following venues:

Central	August 6, 2012	St. Louis, MO, Hilton St. Louis at the Ballpark, 1 South Broadway, St. Louis, MO, 63102, USA, Tel: 1–314–421–1776, 1–877–845–7354 (toll free).
Northeast	August 20, 2012	Boston, MA, Hyatt Harborside at Boston's Logan International Airport, 101 Harborside Drive, Boston, MA, 02128, USA, Tel: 1–617–568–1234, 1–888–421–1442 (toll free).
Southeast	August 23, 2012	Washington, DC, FERC HQ.

[1] Coordination between Natural Gas and Electricity Markets, Docket No. AD12–12–000 (July 5, 2012) (Notice of Technical Conferences) (*http://elibrary.ferc.gov/idmws/common/opennot.asp?fileID=13023450*); 77 FR 41184 (July 12, 2012) (*http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16997.pdf*).

West	August 28, 2012	Portland, OR, DoubleTree by Hilton Hotel Portland, 1000 NE., Multnomah Street, Portland, OR, 97232, USA, Tel: 1–503–281–6111, 1–800–996–0510 (toll free).
Mid-Atlantic	August 30, 2012	Washington, DC, FERC HQ.

Each conference will begin at 9 a.m. and end at approximately 5:30 p.m. The dress code for the conferences will be business casual. Subsequent notices will be issued specifying the agenda and roundtable participants for each conference.

The conferences will not be transcribed. However, there will be a free webcast of the conferences held at FERC HQ and a free audiocast of the conferences held offsite. The webcasts and audiocasts will allow persons to view or listen to the conference, but not participate. Anyone with Internet access who desires to listen to a conference can do so by navigating to *www.ferc.gov's* Calendar of Events and locating the conference in the Calendar. Each conference will contain a link to its webcast or audiocast, as applicable. The Capitol Connection provides technical support for webcasts and audiocasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

If you have not already done so, those that plan to attend a conference are strongly encouraged to complete the registration form located at: *www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form.asp*. If you plan to attend more than one conference, please register separately for each conference.

As provided for in the July 5th notice, those wishing to participate in a roundtable should complete the request form located at *www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-speaker-form.asp* by the close of business on July 19, 2012. The conference will be organized as a roundtable discussion of the topics identified in the July 5th notice and Commission staff will moderate the discussion of each topic. Roundtable participants will not be giving presentations or providing opening remarks. Time permitting, comments or questions from those attending the conference, but not participating in the roundtable, will be permitted. If you would like to participate in more than one roundtable, please complete a separate request form for each conference. Due to time and seating constraints, we may not be able to accommodate all those interested in participating in the roundtables.

Information on the conferences will also be posted on the Web site *www.ferc.gov/industries/electric/indus-act/electric-coord.asp*, as well as the Calendar of Events on the Commission's Web site *www.ferc.g gov*, prior to the conferences.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a Fax to 202–208–2106 with the required accommodations.

For more information about the regional technical conferences, please contact:

Pamela Silberstein, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8938, *Pamela.Silberstein@ferc.gov*.

Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *S Sarah.McKinley@ferc.gov*.

Dated: July 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–17921 Filed 7–23–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OCS–EPA–R4008; OCS–EPA–R4009; OCS–EPA–R4007–M1; FRL–9701–2]

Notice of Issuance of Final Air Permits for BHP Billiton Petroleum, Inc., Murphy Exploration and Production Co., and Eni US Operating Co., Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice is to announce that on May 11, 2012, EPA issued a final Outer Continental Shelf (OCS) air permit for Murphy Exploration and Production Co. (Murphy), and on May 30, 2012, EPA issued a final OCS air permit for BHP Billiton Petroleum, Inc., (BHPB). These permits became effective on June 11, 2012, and June 30, 2012, respectively. In addition, EPA issued a final OCS air permit modification for Eni US Operating Company, Inc. (Eni) on May 8, 2012 that was effective on May 11, 2012.

The Murphy permit regulates air pollutant emissions from the Diamond Offshore *Ocean Confidence* drilling vessel and support vessels, which Murphy intends to operate within lease block Lloyd Ridge 317 on the OCS in the Gulf of Mexico, approximately 135 miles southeast of the mouth of the Mississippi River and 180 miles south of the nearest Florida coast.

The BHPB permit regulates air pollutant emissions from one of two drilling vessels owned by Transocean, either the *C.R. Luigs* or the *Development Driller 1*, and support vessels, which BHPB intends to operate in multiple locations in BHPB's DeSoto Canyon lease blocks on the OCS in the Gulf of Mexico, approximately 120 miles southeast of the mouth of the Mississippi River and 125 miles from the nearest Alabama and Florida coast.

The Eni permit regulates air pollutant emissions from the Transocean *Pathfinder* drilling vessel and support vessels, which Eni intends to operate within lease block Lloyd Ridge 411 on the OCS in the Gulf of Mexico, approximately 154 miles southeast of the mouth of the Mississippi River and 189 miles south of the nearest Florida coast. All three operations will last less than two years, and based on applicable permitting regulations, are "temporary sources" for permitting purposes.

ADDRESSES: The final permits, EPA's response to the public comments for the Murphy and BHPB permits, and additional supporting information are available at *http://www.epa.gov/region4/air/permits/index.htm*. Copies of the final permits and EPA's response to comments are also available for review at EPA Regional Office and upon request in writing. EPA requests that 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: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9117. Ms. Fortin can also be reached via electronic mail at *fortin.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION: On February 29, 2012, the EPA Region 4 Office requested public comments on a proposal to issue an OCS air permit for Murphy. During the public comment period, which ended on March 30, 2012, EPA received comments from Murphy. Also, on April 4, 2012, the EPA Region 4 Office requested public comments on a proposal to issue an OCS air permit for BHPB. During the public comment period, which ended on May 7, 2012, EPA received comments from BHPB. EPA carefully reviewed each of the comments submitted, and after consideration of the expressed view of all interested persons, the pertinent federal statutes and regulations, the applications and additional material relevant to the applications and contained in the administrative record, EPA made a decision in accordance with 40 CFR 52.21, 40 CFR part 71 (in the case of BHPB) and 40 CFR part 55 to issue the final OCS permits.

On March 23, 2012, EPA Region 4 requested public comments on a preliminary determination to grant Eni's request, pursuant to 40 CFR 55.7, for an exemption for two crane engines from 40 CFR part 60 subpart IIII (NSPS for Stationary Compression Ignition Internal Combustion Engines), which resulted in an OCS air permit minor modification for Eni. EPA received no comments during the public comment period, which ended on April 23, 2012. EPA determined in accordance with 40 CFR 52.21, 40 CFR part 71 and 40 CFR part 55 to grant Eni's exemption request and finalize the proposed minor permit modification.

Under 40 CFR 124.19(f)(2), notice of any final Agency action regarding a prevention of significant deterioration (PSD) permit must be published in the **Federal Register**. Section 307(b)(1) of the CAA provides for review of final Agency action that is locally or regionally applicable in the United States Court of Appeals for the appropriate circuit. Such a petition for review of final Agency action must be filed within 60 days from the date of notice of such action in the **Federal Register**. For purposes of judicial review under the CAA, final Agency action occurs when a final PSD permit is issued or denied by EPA and Agency review procedures are exhausted, per 40 CFR 124.19(f)(1).

Any person who filed comments on the draft Murphy permit was provided the opportunity to petition the Environmental Appeals Board by June 11, 2012, and any person who filed comments on the draft BHPB permit was provided the opportunity to petition the Environmental Appeals Board by June 30, 2012. No petitions were submitted; therefore the Murphy permit became effective on June 11, 2012, and the BHPB permit became effective of June 30, 2012. No person filed comments on the draft Eni permit modification; therefore the permit became effective on May 11, 2012.

Dated: July 5, 2012.

Douglas Neeley,

Acting Director, Air, Pesticides and Toxics Management Division, Region 4.

[FR Doc. 2012–18021 Filed 7–23–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0346]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–64 Application for Exporter Short Term Single Buyer Insurance.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The "Application for Exporter Short Term Single Buyer Insurance" form will be used by entities involved in the export of U.S. goods and services, to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The application can be reviewed at: *www.exim.gov/pub/pending/EIB92-64.pdf;*

Application for Exporter Short Term Single Buyer Insurance.

DATES: Comments should be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Walter Kosciow, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 92–64 Application for Exporter Short Term Single Buyer Insurance.

OMB Number: 3048–0018.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Annual Number of Respondents: 310.

Estimated Time per Respondent: 1.5 hours.

Government Annual Burden Hours: 465 hours.

Frequency of Reporting or Use: As needed.

Government Review Time: 6 hours.

Total Hours: 1,860.

Cost to the Government: $72,020.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–18005 Filed 7–23–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0347]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–51 Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Credit Insurance Policies.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The "Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies" form will be used by entities involved in the export of US goods and services, to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

The application can be reviewed at: *www.exim.gov/pub/pending/EIB92-51.pdf* Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Credit Insurance Policies.

DATES: Comments should be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *www.regulations.gov* or by mail to Walter Kosciow, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–51 Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Credit Insurance Policies.

OMB Number: 3048–0015.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Annual Number of Respondents: 3,400.

Estimated Time per Respondent: 30 minutes.

Government Annual Burden Hours: 3,400 hours.

Frequency of Reporting or Use: Yearly.

Government Review Time: 1 hour.

Total Hours: 3,400.

Cost to the Government: $131,648.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–18006 Filed 7–23–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before September 24, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Public Disclosure by Banks.

OMB Number: 3064–0090.

Frequency of Response: Annually.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 4,485.

Estimated Time per Response: 0.5 hour.

Total Annual Burden: 2,525 hours.

General Description: 12 CFR part 350 requires a bank to notify the general public, and in some instances shareholders, that financial disclosure statements are available on request. Required disclosures consist of financial reports for the current and preceding year, which can be photocopied directly from the year-end call reports. Also, on a case-by-case basis, the FDIC may require that descriptions of enforcement actions be included in disclosure statements. The regulation allows, but does not require, the inclusion of management discussions and analysis.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 18th day of July 2012.

Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

[FR Doc. 2012–17937 Filed 7–23–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before September 24, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Registration of Mortgage Loan Originators.

OMB Number: 3064–0171.

Total Estimated Annual Burden: 608,867 with a breakdown as follows—

A. Financial Institution Policies and Procedures for Ensuring Employee-Mortgage Loan Originator Compliance with S.A.F.E. Act Requirements

Affected Public: FDIC-supervised institutions.

Estimated Number of Respondents: 4,080.

Frequency of Response: Annually.

Estimated Time per Response: 20 hours.

Estimated Annual Burden: 81,600 hours.

B. Financial Institution Procedures To Track and Monitor Compliance With S.A.F.E. Act Compliance

Affected Public: FDIC-supervised institutions.

Estimated Number of Respondents: 4,080.

Frequency of Response: Annually.

Estimated Time per Response: 60 hours.

Estimated Annual Burden: 244,800 hours.

C. Financial Institution Procedures for the Collection and Maintenance of Employee Mortgage Loan Originators Criminal History Background Reports

Affected Public: FDIC-supervised institutions.

Estimated Number of Respondents: 4,080.

Frequency of Response: Annually.

Estimated Time per Response: 20 hours.

Estimated Annual Burden: 81,600 hours.

D. Financial Institution Procedures for Public Disclosure of Mortgage Loan Originator's Unique Identifier

Affected Public: FDIC-supervised institutions.

Estimated Number of Respondents: 4,080.

Frequency of Response: Annually

Estimated Time per Response: 25 hours.

Estimated Annual Burden: 102,000 hours.

E. Financial Institution Information Reporting to Registry

Affected Public: FDIC-supervised institutions.

Estimated Number of Respondents: 4,080.

Frequency of Response: Annually.

Estimated Time per Response: 15 minutes.

Estimated Annual Burden: 1,020 hours.

F. Financial Institution Procedures for the Collection of Employee Mortgage Loan Originator's Fingerprints

Affected Public: FDIC-supervised institutions.

Estimated Number of Respondents: 4,080.

Frequency of Response: Annually.

Estimated Time per Response: 4 hours.

Estimated Annual Burden: 16,320 hours.

G. Mortgage Loan Originator Initial and Annual Renewal Registration Reporting and Authorization Requirements

Affected Public: Employee Mortgage Loan Originators.

Estimated Number of Respondents: 59,292.

Frequency of Response: Annually.

Estimated Time per Response: 15 minutes.

Estimated Annual Burden: 14,823 hours.

H. Mortgage Loan Originator Registration Updates Upon Change in Circumstances

Affected Public: Employee Mortgage Loan Originators.

Estimated Number of Respondents: 29,646.

Frequency of Response: On occasion.

Estimated Time per Response: 15 minutes.

Estimated Annual Burden: 7,412 hours.

I. Mortgage Loan Originator Procedures for Disclosure to Consumers of Unique Identifier

Affected Public: Employee Mortgage Loan Originators.

Estimated Number of Respondents: 59,292.

Frequency of Response: Annually.

Estimated Time per Response: 1 hour.

Estimated Annual Burden: 59,292 hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–17986 Filed 7–23–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street,

Philadelphia, Pennsylvania 19105–1521:

1. *Phoenix Bancorp, Inc.,* Minersville, Pennsylvania; to acquire at least 9 percent of the voting shares of Union Bancorp, Inc., and thereby indirectly acquire voting shares of Union Bank & Trust Company, both in Pottsville, Pennsylvania.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *A.N.B. Holding Company, Ltd.,* Terrell, Texas, to acquire additional voting shares, for a total of 34 percent of the voting shares of The ANB Corporation, and thereby indirectly acquire additional voting shares of The American National Bank of Texas, both in Terrell, Texas; and Lakeside Bancshares, Inc., and its subsidiary Lakeside National Bank, both in Rockwall, Texas.

Board of Governors of the Federal Reserve System, July 19, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–18033 Filed 7–23–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Park Sterling Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Citizens South Banking Corporation, and indirectly acquire Citizens South Bank, both in Gastonia, North Carolina, and thereby engage in operating a federal savings bank, pursuant to section 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, July 19, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–18032 Filed 7–23–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12PK]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Using the Standardized National Hypothesis Generating Questionnaire during Multistate Investigations of Foodborne Disease Clusters and Outbreaks—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, it is estimated that roughly 1 in 6 Americans become ill with a foodborne disease. Unfortunately, of these Americans, approximately 128,000 are hospitalized and 3,000 die as a result of foodborne diseases. CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate foodborne disease outbreaks to limit the number of illnesses and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the U.S., there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks, and may cause interviews to occur long after a person's illness.

CDC requests OMB approval to collect standardized information from individuals who have become ill during a multistate foodborne disease event. The questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities and is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The Standardized National Hypothesis Generating Questionnaire (SNHGQ) is a data collection tool for the core elements.

The core elements and use of the SNHGQ would ensure that exposures of importance for investigating multistate outbreaks of various enteric disease pathogens would be ascertained similarly across many jurisdictions. This will allow for rapid pooling of data

to improve the timeliness of hypothesis-generating analyses and reducing the time it takes to pinpoint how and where contamination events occur.

Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners. The questionnaire is designed to be administered over the phone by public health officials to collect core elements data from case-patients or their proxies. It is designed to be used when a multistate cluster of enteric disease infections is identified. Data collected during a multistate investigation of an enteric disease cluster will be pooled and analyzed at the CDC in order to develop hypotheses about potential sources of infection.

The total estimated annualized burden for the Standardized National Generating Questionnaire is 3,000 hours (approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations x 45 minutes/response). There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Individuals	Standardized National Hypothesis Generating Questionnaire (Core Elements).	4,000	1	45/60	3,000
Total					3,000

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–17982 Filed 7–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–0040]

Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

NCEH/ATSDR Exposure Investigations (EIs) [OMB NO: 0923–0040, Expiration Date 11/30/2012] – Revision – The National Center for Environmental Health (NCEH), and the Agency for Toxic Substances and Disease Registry (ATSDR), and the Centers for Disease Control and Prevention (CDC).

Background and Brief Description

EIs are an approach developed by ATSDR that employs targeted biologic (e.g., urine, blood, hair samples) and environmental (e.g., air, water, soil, or food) sampling to determine whether people are or have been exposed to unusual levels of pollutants at specific locations (e.g., where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation). After a chemical release or suspected release into the environment, ATSDR's EIs are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency, the general public, and ATSDR staff.

ATSDR has been conducting EIs since 1995 throughout the United States. All of ATSDR's biomedical assessments and some of the environmental investigations involve participants. Participation is completely voluntary. To assist in interpreting the sampling results, a survey questionnaire appropriate to the specific contaminant is administered to participants. ATSDR collects contact information (e.g., name, address, phone number) to provide the participant with their individual results. Name and address information are broken into nine separate questions (data fields) for computer entry. General information, which includes height, weight, age, race, gender, etc., is also collected primarily on biomedical investigations to assist with results interpretation. General information can account for approximately 20 questions per investigation. Some of this information is investigation-specific; not all of these data are collected for every investigation. ATSDR is seeking a revision of our approval for use of a set of 61 general information questions.

ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, hobbies, jobs, etc. In addition, ATSDR asks questions on recreational or occupational activities that could increase a participant's exposure potential. That information represents an individual's exposure history. To cover those broad categories, ATSDR is also seeking a revision to our approval for the use of sets of topical questions. Of these, we use approximately 12–20 questions about the pertinent environmental exposures per investigation. This number can vary depending on the number of chemicals being investigated the route of exposure (e.g., breathing, eating, touching), and number of other sources of the chemical(s) (e.g., products used, jobs).

Typically, the number of participants in an individual EI ranges from 10 to 100. Questionnaires are generally needed in less than half of the EIs (approximately 7 per year).

The subject matter for the complete set of topical questions includes the following:

(1) Media specific which includes: Air (indoor/outdoor); water (water source and plumbing); soil, and food gardening, fish, game, domestic animals (e.g., chickens).

(2) Other sources such as: occupations; hobbies; household chemical uses and house construction

characteristics; lifestyle (e.g., smoking); medicines and/or health conditions, and foods. There are no costs to respondents other than their time.

ATSDR is requesting approval to conduct this information collection for three years. The estimated annualized burden hours are 350.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Exposure Investigation Participants	Chemical Exposure Questions	700	1	30/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–17961 Filed 7–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12OG]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Science to Practice: Developing and Testing a Marketing Strategy for Preventing Alcohol-related Problems in College Communities—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, 1,700 college students die and more than 1.4 million are injured as a result of alcohol-related incidents. Additionally, about 25% of students report negative academic consequences due to alcohol (Engs *et al.*, 1996; Presley *et al.*, 1996a, 1996b; Wechsler *et al.*, 2002). Despite the enormous public health burden of college-age alcohol misuse, there have been few rigorous evaluations of environmental strategies to address alcohol misuse in college settings. Environmental strategies typically involve implementing and enforcing policies that change the environments that influence alcohol-related behavior and subsequent harm. Further, studies show that the typical lag time between identifying effective interventions and obtaining widespread adoption can stretch to well over a decade. Given the number of students harmed, there is an urgent need to develop more efficient and timely strategies for moving effective science to widespread practice. This project will address this exact issue by systematically developing a marketing strategy for The Safer University Intervention, a comprehensive, community-based environmental prevention program with proven efficacy in reducing intoxication and alcohol-impaired driving among college students.

The CDC proposes an on-line information collection, that will take place during the spring semester of the 2012–2013 academic year, and will constitute a follow-up to a marketing effort targeting a national sample of 4-year colleges and universities. The follow-up comprises a survey of key informants from the sampled institutions and key leaders of the surrounding community.

The CDC will use the information gathered from the on-line survey to: (1) Develop and revise customized marketing and program materials targeting potential campus and community stakeholders; and (2) inform strategies for the marketing plan.

The respondents targeted for the on-line survey include: College Administrators and staff, campus and municipal police; as well as selected community leaders. A total of up to 160 Institutions of Higher Education (IHE) will be contacted with a maximum of 12 participants per IHE. A maximum of 1,800 respondents will be contacted by email and asked to forward the email and participate in the on-line survey. Questions of a sensitive nature will not be asked. The amount of time required for a respondent to take part in the survey is estimated to be less than 1 hour. We estimate a total maximum of 1,800 burden hours.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden hours
College Administrators and staff	On-line survey	600	1	1	600
Campus and Municipal Police officers	On-line survey	600	1	1	600

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden hours
Community Leaders	On-line survey	600	1	1	600
Total Burden Hours					1,800

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–17984 Filed 7–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10389, CMS–855S and CMS–855(A,B,I,R)]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* The Home and Community-Based Service (HCBS) Experience Survey. *Use:* This study is a one-time pilot field test involving individuals who receive HCBS from Medicaid programs. The field test will be conducted for the following purposes: (a) To assess survey methodology—to determine how well a face-to-face survey and telephone survey performs with individuals who receive HCBS services; (b) Psychometric Analysis—to provide information for the revision and shortening of the survey based on the assessment of the reliability and construct validity of survey items and composites; and (c) Case mix adjustment analysis—to assess the variables that may be considered as case mix adjusters. These preliminary research activities are not required by regulation, and will not be used by CMS to regulate or sanction its customers. They will be entirely voluntary and the confidentiality of respondents and their responses will be preserved.

The information collected will be used to revise and test the survey instrument described in the Background section of the PRA package's Supporting Statement. Within the PRA package, Attachment B includes two versions of the survey (one modified for accessibility) and Attachment C has the introductory information. The end result will be an improvement in information collection instruments and in the quality of data collected, a reduction or minimization of respondent burden, increased agency efficiency, and improved responsiveness to the public. Following the field test, CMS will seek approval from the CAHPS consortium for the HCBS Experience Survey to be a new addition to the CAHPS® family of surveys. *Form Number:* CMS–10389 (OCN 0938–New). *Frequency:* Once. *Affected Public:* Individuals and Households. *Number of Respondents:* 18,000. *Total Annual Responses:* 18,000. *Total Annual Hours:* 9,000. (For policy questions regarding this collection contact Anita Yuskauskas at 410–786–0268. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application—Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Suppliers *Use:* The primary function of the CMS 855S Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier enrollment application is to gather information from a supplier that tells us who it is, whether it meets certain qualifications to be a health care supplier, where it renders its services or supplies, the identity of the owners of the enrolling entity, and information necessary to establish the correct claims payment. The goal of evaluating and revising the CMS 855S DMEPOS supplier enrollment application is to simplify and clarify the information collection without jeopardizing our need to collect specific information. The majority of the revisions contained in this submission are non-substantive in nature such as spelling and formatting corrections; however, we also removed duplicate fields and obsolete questions and provided clarification and simplified the instructions for the completing the application. *Form Number:* CMS–855(S) (OCN: 0938–1056); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 43,350; *Total Annual Responses:* 43,350; *Total Annual Hours:* 113,550 (For policy questions regarding this contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application *Use:* The primary function of the CMS–855 Medicare enrollment application is to gather information from a provider or supplier that tells us who it is, whether it meets certain qualifications to be a health care provider or supplier, where it practices or renders its services, the identity of the owners of the enrolling entity, and other information necessary to establish correct claims payments. *Form Number:* CMS–855(A, B, I, R) (OCN: 0938–0685); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 440,450; *Total Annual Responses:* 440,450; *Total Annual Hours:* 856,395 (For policy questions regarding this

contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *August 23, 2012.*

OMB, Office of Information and Regulatory Affairs,
Attention: CMS Desk Officer,
Fax Number: (202) 395–6974,
Email: OIRA_submission@omb.eop.gov.

Dated: July 18, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–17924 Filed 7–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10305]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title:* Medicare Part C and Part D Data Validation (42 CFR 422.516g and 423.514g); *Use:* The Centers for Medicare and Medicaid Services (CMS) established reporting requirements for Medicare Part C and Part D sponsoring organizations (Medicare Advantage Organizations [MAOs], Cost Plans, and Medicare Part D sponsors) under the authority described in 42 CFR 422.516(a) and 423.514(a), respectively. Under these reporting requirements, each sponsoring organization must submit Medicare Part C, Medicare Part D, or Medicare Part C and Part D data (depending on the type of contracts they have in place with CMS). In order for the reported data to be useful for monitoring and performance measurement, it must be reliable, valid, complete, and comparable among sponsoring organizations. In 2009, CMS developed the data validation program as a mechanism to verify the data reported are accurate, valid, and reliable. To maintain the independence of the validation process, sponsoring organizations do not use their own staff to conduct the data validation. Instead, sponsoring organizations are responsible for hiring external, independent data validation contractors (DVCs) who meet a minimum set of qualifications and credentials.

CMS developed standards and data validation criteria for specific Medicare Part C and Part D reporting requirements that the DVCs use in validating the sponsoring organizations' data.[1] These standards and criteria are described in Appendix 1 "Data Validation Standards." The data validation standards for each measure include standard instructions relating to the types of information that should be reviewed, and measure-specific criteria (MSC) that are aligned with the "Medicare Part C and Part D Reporting Requirement Technical Specifications." Furthermore, the standards and criteria describe how the DVCs should validate the sponsoring organizations' compilations of reported data, taking into account appropriate data exclusions, and verifying calculations, source code, and algorithms. The data validation reviews are conducted at the contract level given that the Medicare Part C and Part D data are generally available at the contract level and the contract is the basis of any legal and accountability issues concerning the rendering of services.

The review is conducted over a three-month period following the final submission of data by the sponsoring organizations. In addition to the "Data Validation Standards" described in Appendix 1, the DVCs employ a set of information collection tools when performing their reviews, which are included in the appendices described below:

Appendix 2: Organizational Assessment Instrument
Appendix 3: Data Extraction and Sampling Instructions
Appendix 4: Instructions for the Findings Data Collection Form
Appendix 5: Findings Data Collection Form (FDCF)

Data collected via "Medicare Part C and Part D Reporting Requirements" is an integral resource for oversight, monitoring, compliance and auditing activities necessary to ensure quality provision of the Medicare benefits to beneficiaries. CMS uses the data collected through the Medicare data validation program to substantiate the data collected via Medicare Part C and Part D Reporting Requirements. If CMS detects data anomalies, the CMS division with primary responsibility for the applicable reporting requirement assists with determining a resolution. The hour burden on industry is estimated at 179,301 total hours, or 879 hours for one contract within one organization reporting both Part C and Part D measures. The validation would require 378 hours from the sponsoring organization and 501 from the data validation contractors. The estimates are based on the total number of Part C and/or Part D measures, the average number of sponsors, and the average number of contracts by type (Part C, Part D, Part C/D) being validated as well as a level of effort associated with the individual activities associated with the data validation process. *Form Number:* CMS–10305 (OCN: 0938–1115); *Frequency:* Reporting—Annually; *Affected Public:* Private sector—Business or other for-profits; *Number of Respondents:* 135; *Total Annual Responses:* 657; *Total Annual Hours:* 179,301. (For policy questions regarding this collection contact Terry Lied at 410–786–8973. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/*

[1] CMS determines annually which Medicare Part C and Part D measures are included in the data validation program.

PaperworkReductionActof1995, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by September 24, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 18, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–17926 Filed 7–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2383–N]

RIN 0938–AR45

Children's Health Insurance Program (CHIP); Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2012

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

ACTION: Notice.

SUMMARY: This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2012 (with the qualification that potential increases in such allotments may be available for certain States). Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and the U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the Children's Health Insurance Program (CHIP). The fiscal year allotments contained in this notice were determined in accordance with the funding provisions and final regulations published in the February 17, 2011 **Federal Register**.

DATES: This notice is effective on August 23, 2012. Final allotments may be available for expenditure by States beginning with October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2012 under title XXI of the Social Security Act (the Act). States may implement Children's Health Insurance Program (CHIP) through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both. CHIP allotments for FY 2009 and subsequent fiscal years are available to match expenditures under an approved State child health plan for 2 fiscal years, including the year for which the allotments were provided. As specified by the Act, the allotments are available to States for FY 2012, and the unexpended amounts of such allotments for a State may be carried over to FY 2013 for use by the State. Federal funds appropriated for title XXI of the Act are limited, and the law specifies a methodology to divide the total fiscal year appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2012. Therefore, the FY 2012 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

In general, funding is appropriated under section 2104(a) of the Act for purposes of providing allotments to States under CHIP for each fiscal year. However, title XXI of the Act as amended by section 10203(d)(1) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act) appropriates funding for CHIP fiscal year allotments through FY 2015.

II. Methodology for Determining CHIP Fiscal Year Allotments for the 50 States, the District of Columbia, and the U.S. Territories and Commonwealths

A. Funding Authority for the CHIP Fiscal Year Allotments

Section 2104(a)(1) through (18) of the Act appropriates Federal funds for providing States' allotments for FYs 2009 through 2015. In particular, the appropriated amounts available for allotments for FYs 2009 through 2015, are as follows: $10,562,000,000 for FY 2009; 12,520,000,000 for FY 2010; $13,459,000,000 for FY 2011; $14,982,000,000 for FY 2012; $17,406,000,000 for FY 2013, $19,147,000,000 for FY 2014, and $2,850,000,000 for each of the first and second half of FY 2015. Also, section 108 of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3, enacted on February 4, 2009) (CHIPRA), as amended by section 10203(d) of the Affordable Care Act, provides for a one-time appropriation of $15,361,000,000 for allotments for the first half of FY 2015. Therefore, the total appropriation for providing allotments during FY 2015 is $21,061,000,000 (determined as the sum of $2,850,000,000, $15,361,000,000, and $2,850,000,000).

B. Methodology For Determining State's Fiscal Year Allotments

1. General

Section 2104(m) of the Act sets forth the methodology for determining States' CHIP allotments for each of FYs 2009 through 2015. In general, the States' fiscal year allotments are provided from the appropriation for the respective fiscal year allotment, subject to a proration adjustment described in section II.B.7. of this notice.

2. FY 2009 Through FY 2011 Allotments

On February 17, 2011 we published a final rule in the **Federal Register** (76 FR 9233), that set forth the methodologies and procedures to determine the fiscal year allotments of Federal funds under title XXI of the Act. In particular, the methodologies for determining the CHIP allotments for fiscal year FY 2009 through FY 2011 were contained in the final regulations published in that **Federal Register** publication.

3. FY 2012 Allotments

The FY 2012 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2012 appropriation ($14,982,000,000), and are subject to a proration adjustment described in section II.B.7. of this notice, if necessary. The FY 2012 allotment for each State is determined. by multiplying the allotment increase factor for FY 2012 for the State, by the sum of: the State's FY 2011 allotment and any contingency fund payment made to the State for FY 2011, as determined by section 2104(n) of the Act.

For the 50 States and the District of Columbia, in accordance with section 2104(m)(6) of the Act, the FY 2012 allotment may also include additional amounts under specified conditions for which States have submitted an expansion allotment adjustment request before August 31, 2011.

4. FY 2013 Allotments

The FY 2013 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2013 appropriation ($17,406,000,000). The amounts of these allotments are subject to a proration adjustment described in section II.B.7. of this notice, if necessary. Section 2104(m)(2)(B)(i) of the Act, as amended by the Affordable Care Act requires a "rebasing" process be used for determining the FY 2013 allotments; the rebasing methodology means the States' payments rather than their allotments for FY 2012 must be considered in calculating the FY 2013 allotments. In particular, the FY 2013 allotments are determined by multiplying the allotment increase factor for FY 2013 for the State by the sum of: Any Federal payments made from the States' available allotments in FY 2012; any amounts provided as redistributed allotments in FY 2012 to the State; and any Federal payments attributable to any contingency fund payments made to the State for FY 2012 determined under section 2104(n) of the Act.

5. FY 2014 Allotments

The FY 2014 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2014 appropriation of $19,147,000,000, and are subject to a proration adjustment described in section II.B.7. of this notice, if necessary. Under section 2104(m)(2)(B)(ii) of the Act, as amended by the Affordable Care Act, the FY 2014 allotment for each State is determined by multiplying the allotment increase factor for FY 2014 for the State, by the sum of: the State's FY 2013 allotment; and any contingency fund payment made to the State for FY 2013, as determined in section 2104(n) of the Act.

For the 50 States and the District of Columbia, under section 2104(m)(6) of the Act, the FY 2014 allotment may include additional amounts in situations where such States have submitted an expansion allotment adjustment request before August 31, 2013.

6. FY 2015 Allotments

Under section 2104(m)(3) of the Act, the FY 2015 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are comprised of two components related to the first half of FY 2015 (that is, the period of October 1, 2014 through March 31, 2015) and second half of FY 2015 (that is, April 1, 2015 through September 30, 2015). The FY 2015 allotments for the first and second half of FY 2015 are subject to a proration adjustment described in section II.B.7. of this notice, as necessary.

The allotments for the first half of FY 2015 are provided from a total available appropriation of $18,211,000,000, comprised of $2,850,000,000 appropriated under section 2104(a)(18)(A) of the Act, and $15,361,000,000 appropriated by section 108 of CHIPRA, as amended by the Affordable Care Act. The allotments for the first half of FY 2015 are equal to the "first half ratio" multiplied by the allotment increase factor for FY 2015 multiplied by the sum of any Federal payments made from the States' available allotments in FY 2014; any amounts provided as redistributed allotments in FY 2014 to the State; and any Federal payments attributable to any contingency fund payments made to the State for FY 2014 as determined under section 2104(n) of the Act. The first half ratio is the percentage determined by dividing $18,211,000,000 (calculated as the sum of $2,850,000,000 (the appropriation for the first half of FY 2015) and 15,361,000,000 (the one-time appropriation for the first half of the FY 2015)) by $21,061,000,000 (calculated as the sum of $2,850,000,000 (the appropriation for the second half of FY 2015) and $18,211,000,000).

The States' CHIP allotments for the second half of FY 2015 are provided from a total available appropriation of $2,850,000,000, appropriated under section 2104(a)(18)(B) of the Act. The allotments for the second half of FY 2015 are equal to $2,850,000,000 multiplied by a percentage equal to the amount of the allotment for the State for the first half of FY 2015 divided by the sum of all such first half of FY 2015 allotments for all States.

7. Proration Rule

Under section 2104(m)(4) of the Act, if the amount of States' (including the 50 States, the District of Columbia, and the Commonwealths and Territories) allotments for a fiscal year, or in the case of FY 2015, the amount of an allotment for each half of the fiscal year, exceeds the total appropriations available for such periods, the total allotments for each of these periods will be reduced on a proportional basis. The total amount available nationally for the period is multiplied by a proration percentage determined by dividing the amount determined for the period by the sum of such amounts.

8. The Allotment Increase Factor for a Fiscal Year

Under section 2104(m)(5) of the Act, the allotment increase factor for a fiscal year is equal to the product of 2 amounts for the fiscal year: the per capita health care growth factor and the child population growth factor.

The per capita health care growth factor for a fiscal year is equal to 1 plus the percentage increase in the projected per capita amount of the National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by CMS before the beginning of the fiscal year involved.

In general, for the 50 States and the District of Columbia, the Child Population Growth Factor (CPGF) for a fiscal year is equal to 1 plus the percentage increase (if any) in the population of children in the State from July 1 in the previous fiscal year to July 1 in the fiscal year involved, as determined by CMS based on the most recent published estimates of the Census Bureau available before the beginning of the fiscal year involved, plus 1 percentage point. In the determination of the CPGF, section 2104(m)(5)(B) of the Act refers to "the percentage increase (if any)" of the population of children in the State. In this regard, CPGF refers only to increases in the population of children. Thus, if there was a decrease in the population of children over the indicated period, the CPGF for such State would be 0.0 percent plus one percentage point; that is, negative growth in the children population

would not result in the growth factor being less than 101 percent.

9. Allotments for the Commonwealths and Territories

Section 2104(m)(1)(B) of the Act provided for 2009 allotments for the commonwealths and territories based upon the highest amount available for any fiscal year from 1999 through 2008, multiplied by the allotment increase factor with the term "United States" substituted for the term "the State" (so that the increase for the commonwealths and territories will be based on the CPFG rate for the entire country rather than specific to the commonwealth or territory). For fiscal years *after* FY 2009, using the same methodology described above for the 50 States and District of Columbia. The 2009 change to the allotment increase factor does not apply, and thus we will determine a commonwealth or territory-specific allotment increase factor, based on the CPFG for each commonwealth or territory, based on the most recent published estimates of the Census Bureau. In accordance with section 602(b) of the CHIPRA, which added a new section 2109(b)(2)(B) of the Act, we will be working with the Secretary of the Commerce Department on appropriate adjustments to improve the Current Population Survey (CPS), or develop other data, to determine the CPGF.

C. FY 2012 Allotments Determined in Accordance With Such Methodologies and Procedures

We calculated the FY 2012 allotments as discussed in section II.B.3. of this notice and in accordance with section 2104(m) of the Act and final regulations at 42 CFR 457.609 (published in the February 17, 2011 **Federal Register**. That calculation is presented in 2 tables described in section III. of this notice. Table 1 provides the calculation of the allotment increase factor for FY 2012, and Table 2 provides the calculation of the FY 2012 allotment.

At this time, table 2 does not contain the amounts of increases, if any, to the FY 2012 allotments for certain States that applied for such increases in accordance the provisions of section 2104(m)(6) of the Act. The amounts of such increases to the FY 2012 allotments for any affected States will be determined at a later date.

III. Tables

Following are the keys and associated tables for the CHIP funding provisions as discussed in previous sections (note that for purposes of presentation and due to rounding, not all numbers following decimals are shown in the following tables):

Table 1—Allotment Increase Factor for 2012

Table 2—FY 2012 Children's Health Insurance Program Allotments Under the Children's Health Insurance Program

A. Table 1—Allotment Increase Factor for 2012

Key to Table 1

Column/Description

Column A = *State*. Column A contains the name of the State, District of Columbia, U.S. Commonwealth or Territory.

Column B = *PCNHE 2011, PCNHE 2012, PCHCG Factor*. Column B contains the calculation of the per Capita Health Care Growth (PCHCG) Factor for FY 2012, determined as 1 plus the percentage increase in the per Capital National Health Expenditures (PCNHE) from calendar year 2011 to calendar year 2012.

Columns C through F = *Calculation of the Child Population Growth Factor (CPGF) for FY 2012:*

Column C = *July 1, 2011 Child Population*. Column C contains the population of children in each State or the United States as of July 1, 2011, as provided by the most recent published data of the Census Bureau before the beginning of FY 2012.

Column D = *July 1, 2012 Child Population*. Column D contains the population of children in each State or the United States as of July 1, 2012, as provided by the most recent published data of the Census Bureau before the beginning of FY 2012.

Column E = *Percent Increase 2011–2012*. Column E contains the percentage increase, if any, of the population of children in each State, or the United States, from July 1, 2011 to July 1, 2012, calculated as the difference between the number in Column D minus the number in Column C divided by the number in Column C.

Column F = *FY 2012 Child Population Growth Factor*. Column F contains the Child Population Growth Factor (CPGF) for each State, determined as 1.01 plus the percent in Column E for the State.

Column G = *FY 2012 Allotment Increase Factor*. Column G contains the FY 2012 Allotment Increase Factor, calculated as the PCHCG factor in Column B multiplied by the CPGF percent in Column F.

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Table 1 - FY 2012 Allotment Increase Factor						
STATE	PCNHE* 2011 $8,649 PCNHE* 2012 $8,937 PCHCG Factor* 1.0333	Child Population Growth Factor (CPGF) for FY 2012				FY 2012 ALLOTMENT INCREASE FACTOR
		July 1, 2011 Population	July 1, 2012 Population	Percent Increase 2011 - 2012	FY 2012 CPGF Col E + 1.01	
				(D-C)/C		Col B x F
A	B	C	D	E	F	G
Alabama	1.0333	1,197,930	1,195,232	0.00%	101.00%	1.0436
Alaska	1.0333	200,957	203,995	1.51%	102.51%	1.0593
Arizona	1.0333	1,740,148	1,753,611	0.77%	101.77%	1.0516
Arkansas	1.0333	756,842	761,253	0.58%	101.58%	1.0497
California	1.0333	9,904,911	9,940,141	0.36%	101.36%	1.0473
Colorado	1.0333	1,310,431	1,326,171	1.20%	102.20%	1.0560
Connecticut	1.0333	858,466	852,874	0.00%	101.00%	1.0436
Delaware	1.0333	219,074	218,671	0.00%	101.00%	1.0436
District of Columbia	1.0333	111,641	112,529	0.80%	101.80%	1.0519
Florida	1.0333	4,264,361	4,274,098	0.23%	101.23%	1.0460
Georgia	1.0333	2,647,927	2,659,281	0.43%	101.43%	1.0481
Hawaii	1.0333	321,512	322,407	0.28%	101.28%	1.0465
Idaho	1.0333	454,637	456,580	0.43%	101.43%	1.0480
Illinois	1.0333	3,302,365	3,297,624	0.00%	101.00%	1.0436
Indiana	1.0333	1,698,020	1,695,285	0.00%	101.00%	1.0436
Iowa	1.0333	771,059	771,448	0.05%	101.05%	1.0442
Kansas	1.0333	773,018	779,308	0.81%	101.81%	1.0520
Kentucky	1.0333	1,083,080	1,084,850	0.16%	101.16%	1.0453
Louisiana	1.0333	1,189,754	1,196,280	0.55%	101.55%	1.0493
Maine	1.0333	286,516	282,237	0.00%	101.00%	1.0436
Maryland	1.0333	1,432,936	1,434,145	0.08%	101.08%	1.0445
Massachusetts	1.0333	1,510,514	1,507,346	0.00%	101.00%	1.0436
Michigan	1.0333	2,447,034	2,413,513	0.00%	101.00%	1.0436

Table 1 - FY 2012 Allotment Increase Factor						
Minnesota	1.0333	1,354,631	1,354,212	0.00%	101.00%	1.0436
Mississippi	1.0333	797,495	794,911	0.00%	101.00%	1.0436
Missouri	1.0333	1,506,651	1,504,795	0.00%	101.00%	1.0436
Montana	1.0333	236,262	236,018	0.00%	101.00%	1.0436
Nebraska	1.0333	488,656	492,530	0.79%	101.79%	1.0518
Nevada	1.0333	700,805	700,802	0.00%	101.00%	1.0436
New Hampshire	1.0333	300,596	296,579	0.00%	101.00%	1.0436
New Jersey	1.0333	2,173,825	2,170,361	0.00%	101.00%	1.0436
New Mexico	1.0333	555,284	560,651	0.97%	101.97%	1.0536
New York	1.0333	4,577,506	4,563,872	0.00%	101.00%	1.0436
North Carolina	1.0333	2,430,493	2,444,094	0.56%	101.56%	1.0494
North Dakota	1.0333	161,176	162,609	0.89%	101.89%	1.0528
Ohio	1.0333	2,863,960	2,844,304	0.00%	101.00%	1.0436
Oklahoma	1.0333	993,343	1,003,154	0.99%	101.99%	1.0538
Oregon	1.0333	918,986	921,708	0.30%	101.30%	1.0467
Pennsylvania	1.0333	2,954,664	2,940,768	0.00%	101.00%	1.0436
Rhode Island	1.0333	238,723	236,809	0.00%	101.00%	1.0436
South Carolina	1.0333	1,150,093	1,151,948	0.16%	101.16%	1.0453
South Dakota	1.0333	216,578	218,418	0.85%	101.85%	1.0524
Tennessee	1.0333	1,583,373	1,583,969	0.04%	101.04%	1.0440
Texas	1.0333	7,382,188	7,498,276	1.57%	102.57%	1.0599
Utah	1.0333	934,547	950,334	1.69%	102.69%	1.0611
Vermont	1.0333	136,701	134,731	0.00%	101.00%	1.0436
Virginia	1.0333	1,976,806	1,989,078	0.62%	101.62%	1.0500
Washington	1.0333	1,684,003	1,693,855	0.59%	101.59%	1.0497
West Virginia	1.0333	410,002	409,410	0.00%	101.00%	1.0436
Wisconsin	1.0333	1,410,790	1,405,047	0.00%	101.00%	1.0436
Wyoming	1.0333	143,312	143,570	0.18%	101.18%	1.0455
Total States	1.0333	78,764,582	78,945,692	0.23%	101.23%	1.0460

Table 1 - FY 2012 Allotment Increase Factor						
American Samoa	1.0333	27,669	27,367	0.00%	101.00%	1.0436
Guam	1.0333	62,538	62,507	0.00%	101.00%	1.0436
N. Mariana Islands	1.0333	14,968	14,295	0.00%	101.00%	1.0436
Puerto Rico	1.0333	936,626	918,667	0.00%	101.00%	1.0436
Virgin Islands	1.0333	27,563	26,844	0.00%	101.00%	1.0436
Total Territories	1.0333	1,069,364	1,049,680	0.00%	101.00%	1.0436
Total States/Territories	1.0333	79,833,946	79,995,372	0.20%	101.20%	1.0457

Footnotes:
*"PCNHE" is Per Capita National Health Expenditures
"PCHCG FACTOR" is "Per Capita Health Care Growth Factor", Calculated as:
1 + ($8,937 - $8,649)/$8,649; $8,649 is PCNHE for 2011 and $8,937 is PCNHE for 2012

B. Table 2—FY 2012 Children's Health Insurance Program

Key to Table 2

Column/Description

Column A = *State.* Column A contains the name of the State, District of Columbia, U.S. Commonwealth or Territory.

Column B = *FY 2011 CHIP Allotments.* Column B contains, for the 50 States and the District of Columbia only, the States' FY 2011 CHIP allotments, as were published in the February 17, 2011 **Federal Register** (76 FR 9233).

Column C = *FY 2011 Contingency Fund Payments.* Column C contains the amounts of any contingency funds payments made to a State for FY 2011 determined in accordance with the provisions of section 2104(n) of the Act.

Column D = *Total.* Column D contains the total of the amounts in Columns B and C.

Column E = *FY 2012 Allotment Increase Factor.* Column E contains the Allotment Increase Factor for each State as contained in Column G of Table 1.

Column F = *FY 2012 Total* × *Increase Factor.* Column F contains the product of the total amount in Column D and the amount of the FY 2012 Allotment Increase Factor in Column E. This amount represents the FY 2012 CHIP allotment without the inclusion of any additional amounts available for the FY 2012 allotment indicated in Column G.

Column G = *Additional Amount Available for FY 2012 Allotment.* Column G contains, for the 50 States and the District of Columbia only, the amount of additional amounts available to increase the FY 2012 allotment, if any, as determined under the provisions of section 2014(m)(6) or (7) of the Act. Amounts of additional CHIP allotments, if any, will be determined at a later date based on updated information that must be obtained from affected States.

Column H = *Total FY 2012 Allotment.* Column H contains the total FY 2012 CHIP allotment, determined as the sum of the amounts in Column F and Column G, if any.

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TABLE 2 - CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FY:							2012
STATE	FY 2011 CHIP Allotments /1	FY 2011 Contingency Fund Payments /3	Total Col B + C	FY 2012 Allotment Increase Factor	FY 2012 Total x Incr. Factor Col D x E	Additional Amount Available for FY 2012 Allotment /2	Total FY 2012 Allotment Col F + G
A	B	C	D	E	F	G	H
Alabama	$135,448,405	$0	$135,448,405	1.0436	$141,358,240	$0	**$141,358,240**
Alaska	$19,830,170	$0	$19,830,170	1.0593	$21,005,161	$0	**$21,005,161**
Arizona	$61,462,234	$0	$61,462,234	1.0516	$64,635,280	$0	**$64,635,280**
Arkansas	$90,852,696	$0	$90,852,696	1.0497	$95,363,884	$0	**$95,363,884**
California	$1,254,894,664	$0	$1,254,894,664	1.0473	$1,314,259,831	$0	**$1,314,259,831**
Colorado	$123,498,650	$0	$123,498,650	1.0560	$130,419,874	$0	**$130,419,874**
Connecticut	$31,319,750	$0	$31,319,750	1.0436	$32,686,282	$0	**$32,686,282**
Delaware	$13,570,030	$0	$13,570,030	1.0436	$14,162,113	$0	**$14,162,113**
District of Columbia	$11,989,462	$0	$11,989,462	1.0519	$12,611,122	$0	**$12,611,122**
Florida	$324,871,259	$0	$324,871,259	1.0460	$339,812,416	$0	**$339,812,416**
Georgia	$239,369,074	$0	$239,369,074	1.0481	$250,873,702	$0	**$250,873,702**
Hawaii	$33,256,672	$0	$33,256,672	1.0465	$34,803,375	$0	**$34,803,375**
Idaho	$36,205,733	$0	$36,205,733	1.0480	$37,945,335	$0	**$37,945,335**
Illinois	$273,211,456	$0	$273,211,456	1.0436	$285,132,118	$0	**$285,132,118**
Indiana	$94,539,496	$0	$94,539,496	1.0436	$98,664,409	$0	**$98,664,409**
Iowa	$75,497,451	$29,517,883	$105,015,334	1.0442	$109,652,069	$0	**$109,652,069**
Kansas	$55,864,250	$0	$55,864,250	1.0520	$58,771,399	$0	**$58,771,399**
Kentucky	$129,600,603	$0	$129,600,603	1.0453	$135,474,139	$0	**$135,474,139**
Louisiana	$186,019,342	$0	$186,019,342	1.0493	$195,189,993	$0	**$195,189,993**
Maine	$35,489,739	$0	$35,489,739	1.0436	$37,038,214	$0	**$37,038,214**
Maryland	$168,778,027	$0	$168,778,027	1.0445	$176,289,232	$0	**$176,289,232**
Massachusetts	$316,954,868	$0	$316,954,868	1.0436	$330,784,127	$0	**$330,784,127**
Michigan	$120,969,799	$0	$120,969,799	1.0436	$126,247,909	$0	**$126,247,909**
Minnesota	$20,498,108	$0	$20,498,108	1.0436	$21,392,474	$0	**$21,392,474**

TABLE 2 - CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FY:							2012
STATE	FY 2011 CHIP Allotments /1	FY 2011 Contingency Fund Payments /3	Total Col B + C	FY 2012 Allotment Increase Factor	FY 2012 Total x Incr. Factor Col D x E	Additional Amount Available for FY 2012 Allotment /2	Total FY 2012 Allotment Col F + G
A	B	C	D	E	F	G	H
Mississippi	$160,648,691	$0	$160,648,691	1.0436	$167,658,056	$0	**$167,658,056**
Missouri	$112,711,034	$0	$112,711,034	1.0436	$117,628,801	$0	**$117,628,801**
Montana	$38,465,967	$0	$38,465,967	1.0436	$40,144,300	$0	**$40,144,300**
Nebraska	$38,942,532	$0	$38,942,532	1.0518	$40,960,670	$0	**$40,960,670**
Nevada	$24,078,374	$0	$24,078,374	1.0436	$25,128,953	$0	**$25,128,953**
New Hampshire	$12,820,685	$0	$12,820,685	1.0436	$13,380,072	$0	**$13,380,072**
New Jersey	$592,187,888	$0	$592,187,888	1.0436	$618,026,013	$0	**$618,026,013**
New Mexico	$245,491,788	$0	$245,491,788	1.0536	$258,654,763	$0	**$258,654,763**
New York	$525,835,994	$0	$525,835,994	1.0436	$548,779,077	$0	**$548,779,077**
North Carolina	$382,336,267	$0	$382,336,267	1.0494	$401,229,015	$0	**$401,229,015**
North Dakota	$15,257,665	$0	$15,257,665	1.0528	$16,063,553	$0	**$16,063,553**
Ohio	$277,964,677	$0	$277,964,677	1.0436	$290,092,730	$0	**$290,092,730**
Oklahoma	$120,388,959	$0	$120,388,959	1.0538	$126,870,371	$0	**$126,870,371**
Oregon	$91,101,501	$0	$91,101,501	1.0467	$95,355,233	$0	**$95,355,233**
Pennsylvania	$321,847,069	$0	$321,847,069	1.0436	$335,889,782	$0	**$335,889,782**
Rhode Island	$30,344,559	$0	$30,344,559	1.0436	$31,668,542	$0	**$31,668,542**
South Carolina	$98,026,552	$0	$98,026,552	1.0453	$102,466,984	$0	**$102,466,984**
South Dakota	$20,067,331	$0	$20,067,331	1.0524	$21,119,066	$0	**$21,119,066**
Tennessee	$134,225,460	$0	$134,225,460	1.0440	$140,134,143	$0	**$140,134,143**
Texas	$832,714,327	$0	$832,714,327	1.0599	$882,577,834	$0	**$882,577,834**
Utah	$63,915,866	$0	$63,915,866	1.0611	$67,820,283	$0	**$67,820,283**
Vermont	$5,793,764	$0	$5,793,764	1.0436	$6,046,555	$0	**$6,046,555**
Virginia	$175,234,257	$0	$175,234,257	1.0500	$184,004,091	$0	**$184,004,091**
Washington	$45,365,924	$0	$45,365,924	1.0497	$47,619,557	$0	**$47,619,557**
West Virginia	$41,268,373	$0	$41,268,373	1.0436	$43,068,980	$0	**$43,068,980**

TABLE 2 - CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FY:							2012
STATE	FY 2011 CHIP Allotments /1	FY 2011 Contingency Fund Payments /3	Total Col B + C	FY 2012 Allotment Increase Factor	FY 2012 Total x Incr. Factor Col D x E	Additional Amount Available for FY 2012 Allotment /2	Total FY 2012 Allotment Col F + G
A	B	C	D	E	F	G	H
Wisconsin	$102,733,015	$0	$102,733,015	1.0436	$107,215,424	$0	**$107,215,424**
Wyoming	$9,988,524	$0	$9,988,524	1.0455	$10,442,920	$0	**$10,442,920**
States/DC Total	**$8,373,748,981**	**$29,517,883**	**$8,403,266,864**		**$8,804,618,466**	**$0**	**$8,804,618,466**
Commonwealths and Territories /4							
American Samoa	$1,200,298	$0	$1,200,298	1.0436	$1,252,669	$0	**$1,252,669**
Guam	$4,177,637	$0	$4,177,637	1.0436	$4,359,914	$0	**$4,359,914**
N. Mariana Islands	$861,110	$0	$861,110	1.0436	$898,682	$0	**$898,682**
Puerto Rico	$99,566,548	$0	$99,566,548	1.0436	$103,910,799	$0	**$103,910,799**
Virgin Islands	$0	$0	$0	1.0436	$0	$0	**$0**
Total	**$105,805,593**	**$0**	**$105,805,593**		**$110,422,064**	**$0**	**$110,422,064**
NATIONAL TOTAL	**$8,479,554,574**	**$29,517,883**	**$8,509,072,457**		**$8,915,040,530**	**$0**	**$8,915,040,530**

Footnotes:
/1 Final FY 2011 Allotments determined in accordance with section 1902(m)(2) of the Social Security Act(the Act)
/2 Additional amount for FY 2012 allotment under section 2104(m)(6) of the Act to be determined at a later date
/3 Contingency Fund Payments for FY 2011 determined in accordance with section 2104(n) of the Social Security Act

IV. Collection of Information Requirements

This document does not impose any information collection or recordkeeping requirements. Consequently, it is not subject to Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Waiver of Notice With Comment

We ordinarily publish a notice with comment in the **Federal Register** and invite public comment. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the notice issued.

On February 17, 2011 we issued a final rule in the **Federal Register** (76 FR 9233) that set forth the methodologies and procedures to determine CHIP allotments in accordance with applicable Federal laws on that date. The CHIP allotments for FY 2012 contained in this **Federal Register** notice were determined in accordance with the existing statute and the final regulations.

Therefore, we find good cause to waive the notice with comment and to issue this final notice.

VI. Regulatory Impact Analysis

A. Overall

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this final notice is not economically significant, since it does not provide the methodologies under which State allotments for FY 2012 are calculated; rather, this notice contains the FY 2012 CHIP allotments determined in accordance with existing statute and regulations.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most hospitals and most other providers and suppliers are small entities as that term is used in the RFA nonprofit organizations. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business having revenues of less than $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this final notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this final notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This notice will not create an unfunded mandate on States, tribal, or local governments in the aggregate, or by the private sector in the amount of $139 million in any one year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this final notice will not significantly affect States' rights, roles, and responsibilities.

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the additional funds provided by the FY 2009 allotment amounts.

B. Anticipated Effects

1. Effects on the CHIP Program

This notice provides the FY 2012 CHIP allotments determined in accordance with the CHIP statute and regulations. States will be able to administer their CHIP programs with the appropriate levels of funding made available by such allotments.

2. Effects on Other Entities

This notice will have no effects on other entities; it is only promulgating the FY 2012 CHIP allotments determined in accordance with existing statute and regulations.

C. Alternatives Considered

The FY 2012 CHIP allotments contained in this notice were determined in accordance with existing statute and regulations; accordingly, no alternatives were considered.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this rule. This table provides our best impact estimate of the rule, as it implements the CHIP, under which approximately up to $8.9 billion in additional Federal funds is made available for FY 2012. All expenditures are classified as transfers from the Federal Government to States.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FY 2012

[In $billions]

Category	TRANSFERS			
	Year dollar	Units discount rate		Period covered
Annualized Monetized Transfers	.....	7%	3%	.....
	2012	$8.9	$8.9	FY–2012
From Whom To Whom?	Federal Government to States.			

In accordance with the provisions of Executive Order 12866, this final notice was reviewed by the Office of Management and Budget.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program).

Dated: *May 14, 2012.*

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 11, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–17953 Filed 7–20–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2384–N]

RIN 0938–AR46

Medicaid Program; Disproportionate Share Hospital Allotments and Institutions for Mental Diseases Disproportionate Share Hospital Limits for FYs 2010, 2011, and Preliminary FY 2012 Disproportionate Share Hospital Allotments and Limits

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

ACTION: Notice.

SUMMARY: This notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal FY (FY) 2010, 2011 and the preliminary Federal share DSH allotments for FY 2012. This notice also announces the final FY 2010, 2011 and the preliminary FY 2012 limits on aggregate DSH payments that States may make to institutions for mental diseases (IMD) and other mental health facilities. In addition, this notice includes background information describing the methodology for determining the amounts of States' FY DSH allotments.

DATES: *Effective Date:* This notice is effective on August 23, 2012. The final allotments and limitations set forth in this notice are effective for the fiscal years specified.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1923(f)(3) of the Social Security Act (the Act), States' Federal fiscal year (FY) 2003 disproportionate share hospital (DSH) allotments were calculated by increasing the amounts of the FY 2002 allotments for each State (as specified in the chart, entitled "DSH Allotment (in millions of dollars)", contained in section 1923(f)(2) of the Act) by the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the prior fiscal year. The allotment, determined in this way, is subject to the limitation that an increase to a State's DSH allotment for a FY cannot result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous FY or 12 percent of the State's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

However, section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, enacted on December 8, 2003) (MMA) amended section 1923(f)(3) of the Act to provide for a "Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis." Under this provision, States' FY 2004 DSH allotments were determined by increasing their FY 2003 allotments by 16 percent and the FY DSH allotment amounts determined were not subject to the 12 percent limit.

Also, under section 1923(h) of the Act, Federal financial participation (FFP) is not available for DSH payments to institutions for mental diseases (IMDs) and other mental health facilities that are in excess of State-specific aggregate limits. Under this provision, this aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a State's FY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FY 1995 DSH allotment (as reported on the Form CMS–64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

In general, we initially determine States' DSH allotments and IMD DSH limits for a FY using estimates of medical assistance expenditures, including DSH expenditures in their Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS–37) before the FY for which the DSH allotments and IMD DSH limits are being determined. Also, as part of the basic determination of preliminary DSH allotments for a FY, we use the available CPI–U percentage increase that is available before the beginning of the FY for which the allotment is being determined to determine the preliminary FY DSH allotment. For example, in determining the preliminary FY 2012 DSH allotment, we would apply the CPI–U percentage increase for FY 2011 that was available just before the beginning of FY 2012 on October 1, 2011.

Section 5002 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, enacted on February 17, 2009) (Recovery Act), added a new section 1923(f)(3)(E) of the Act; that provided fiscal relief to States during the recent national economic downturn. In that regard, section 1923(f)(3)(E)(i)(I) of the Act, as created by section 5002 of the Recovery Act, required that, in general, States' DSH allotments for FY

2009 be equal to 102.5 percent of the FY 2009 allotments that would otherwise have been determined; this Recovery Act provision does not apply to certain States.

For a detailed description of the background of this notice, please refer to "Final FY 2009 and Preliminary FY 2011 Disproportionate Share Hospital Allotments, and Final FY 2009 and Preliminary FY 2011 Institutions for Mental Diseases Disproportionate Share Hospital Limits" notice published in the January 3, 2011 **Federal Register** (76 FR 148).

II. Provisions of the Notice

A. Calculation of the Final FY 2010, Final FY 2011 Federal Share State DSH Allotments, and the Preliminary FY 2012 Federal Share State DSH Allotments

1. Final FY 2010 and FY 2011 Federal Share State DSH Allotments

Chart 1 and Chart 2 of the Addendum to this notice provides the States' final FY 2010 and final FY 2011 DSH allotments, respectively. As described in the previous **Federal Register** notices in determining non-Low DSH States' DSH allotments for FYs after FY 2004 under section 1923(f)(3)(C) of the Act for DSH allotments, we determined States' DSH allotments under a "parallel" process. Under the parallel process, for each FY for each State, we determine whether the fiscal year specified (as defined in section 1923(f)(3)(D) of the Act) has occurred. Section 1923(f)(3)(D) of the Act describes the fiscal year specified is determined separately for each State and "is the first FY for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before the date of enactment" of MMA. The process in effect before the enactment in MMA is the process described in section 1923(f)(3)(A) of the Act; in this process each States' DSH allotment since FY 2003 is increased by the CPI–U increase for the prior FY and the result is then compared to the State's FY 2004 DSH allotment, as determined by section 1923(f)(3)(C)(i) of the Act. The fiscal year specified for a State is the FY when the FY 2004 allotment is no longer greater than the parallel process DSH allotment.

In accordance to the parallel process provision, we determined that FY 2009 was the fiscal year specified for all non-Low DSH States (except Louisiana). Therefore, in section 1923(f)(3)(C)(ii) of the Act, the Final FY 2009 DSH allotment for all non-Low DSH States (except Louisiana) is equal to the prior FY 2008 DSH allotment increased by the CPI–U increase for FY 2008 (4.4 percent).

Chart 1 contains the final FY 2010 DSH allotments and Chart 2 contains the final FY 2011 DSH allotments. For the non-Low DSH States for which the FY 2009 is the fiscal year specified, that fiscal year and for following fiscal years, the FY DSH allotments are calculated by increasing the prior FY DSH allotment by the CPI–U increase for the prior fiscal year.

For Low-DSH States, the FY 2009 DSH allotments were calculated using the same methodology as for the non-Low DSH States for which the fiscal year specified has occurred. That is, for FY 2009 and following FYs, the DSH allotment for Low-DSH States is calculated by increasing the prior FY DSH allotment by the percentage change in the CPI–U for the prior fiscal year.

As discussed in the "Background" section of this notice, under section 5002 of the Recovery Act, the preliminary FY 2010 DSH allotment was determined as the higher of 102.5 percent of the FY 2009 DSH allotment (as determined under the Recovery Act) or the FY 2010 DSH allotment as would have been determined without application of the Recovery Act provisions. Accordingly, the preliminary FY 2010 DSH allotments were initially determined using the States' August 2009 expenditure estimates submitted by the States on the Form CMS–37, and the percentage increase in the CPI–U for the previous FY that was available before the beginning of FY 2010. Then, this amount was compared to the DSH allotment amount equal to 102.5 percent of the FY 2009 DSH allotments as determined under the Recovery Act provisions. For all applicable states the Recovery Act provision resulted in a higher FY 2010 DSH allotment.

The final FY 2011 DSH allotments were determined by first determining the FY 2010 DSH allotments as they would have been calculated without application of the Recovery Act provisions. That is, first the amount of the final FY 2010 DSH allotments were determined by adjusting the amount of the final FY 2009 DSH allotments (also determined without application of the Recovery Act provisions) by the CPI–U percentage increase for FY 2009; this final FY 2010 DSH allotment amount (determined without application of the Recovery Act provisions) was then increased by the CPI–U percentage increase for FY 2010 to determine the final FY 2011 DSH allotments contained in this notice.

2. Calculation of the Preliminary FY 2012 Federal Share State DSH Allotments

Chart 3 of the Addendum to this notice provides the preliminary FY 2012 DSH allotments determined in accordance with the section 1923(f)(3) of the Act. As described in the "Background" section of the January 3, 2011 **Federal Register** (76 FR 148) notice, the Recovery Act provisions which increased States' DSH allotments for FY 2009 and FY 2010 are not applicable for determining States' FY 2012 DSH allotments and following fiscal years. That is, the preliminary FY 2012 DSH allotments were determined using States' estimates of FY 2012 expenditures and increasing the FY 2011 allotments by the percentage increase in the CPI–U for FY 2011. States' final FY 2012 DSH allotments will be published in the **Federal Register** following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS–64) for FY 2012 following the end of FY 2012.

B. Calculation of the Final FY 2010, the Final FY 2011, and the Preliminary FY 2012 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for IMD or DSH payments that exceed the IMD limits. In this notice, we are publishing the final FY 2010, the final FY 2011, and the preliminary FY 2012 IMD DSH Limits determined in accordance with the provisions discussed above, and for FY 2010 reflecting the DSH allotments for the FY determined under the provisions of section 1923(f)(3)(E) of the Act, as amended by section 5002 of the Recovery Act.

Charts 4, 5, and 6 of the "Addendum" to this notice detail each State's final FY 2010, final FY 2011, and preliminary FY 2011 IMD DSH Limits, respectively, determined in accordance with section 1923(h) of the Act

III. Collection of Information Requirements

This notice does not impose any new or revised information collection or recordkeeping requirements. The requirements and burden associated with CMS–37 (OMB 0938–0101) are unaffected by this notice. Consequently, this notice and CMS–37 are not subject to Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice does not reach the $100 million economic threshold and thus is not considered a major rule under the Congressional Review Act.

There are no changes between the final FY 2010 DSH allotments and FY 2010 IMD DSH limits and the preliminary FY 2010 DSH allotments and FY 2010 IMD DSH limits published in the April 23, 2010 **Federal Register** (75 FR 21314).

The final FY 2011 DSH allotments being published in this notice are approximately $10 million less than the preliminary FY 2011 DSH allotments published in the January 3, 2011 **Federal Register** (76 FR 148). The final FY 2011 IMD DSH limits being published in this notice are approximately $1 million less than the preliminary FY 2011 IMD DSH limits published in the January 3, 2011 **Federal Register** on (76 FR 148). The decrease in the FY 2011 DSH allotments are due to the difference between the final percentage change in the CPI–U for FY 2010 used in the calculation of the final FY 2011 allotments (1.7 percent) as compared to the estimated percentage change in the CPI–U for FY 2010 used in the calculation of the preliminary allotments (1.8 percent). The decreases in the IMD DSH limits are because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY, and since the final FY 2011 DSH allotments were decreased as compared to the preliminary FY 2011 DSH allotments, the associated FY 2011 IMD DSH limits for some States were also decreased.

The preliminary FY 2012 DSH allotments being published in this notice are about $64 million more than the final FY 2011 DSH allotments being published in the **Federal Register**. The preliminary FY 2012 IMD DSH limits being published in this notice are about $11 million more than the final FY 2011 IMD DSH limits being published in the **Federal Register**. The increase in the DSH allotments is due to the application of the statutory formula for calculating DSH allotments under which the prior fiscal year allotments are increased by the percentage increase in the CPI–U for the prior fiscal year. The increase in the IMD DSH limits is because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY, and since the preliminary FY 2012 DSH allotments were greater than the final FY 2011 DSH allotments, the associated FY 2012 IMD DSH limits for some States also increased.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have a significant economic impact on a substantial number of small entities. Specifically, the effects of the various controlling statutes on providers are not impacted by a result of any independent regulatory impact and not this notice. The purpose of the notice is to announce the latest distributions as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Medicaid statute specifies the methodology for determining the amounts of States' DSH allotments and IMD DSH limits; and as described previously, results in the decreases or increases in States' DSH allotments and IMD DSH limits for the FYs referred to. The statute applicable to these allotments and limits does not apply to the determination of the amounts of DSH payments made to specific DSH hospitals; rather, these allotments and limits represent an overall limit on the total of such DSH payments. In this regard, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This notice will have no consequential effect on State, local, or tribal governments, in the aggregate, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

Alternatives Considered

The methodologies for determining the States' fiscal year DSH allotments and IMD DSH Limits, as reflected in this notice, were established in accordance with the methodologies and formula for determining States' allotments as specified in statute. This notice does not put forward any further discretionary administrative policies for determining such allotments.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the estimated expenditures associated with the provisions of this notice. This table provides our best estimate of the change (decrease) in the Federal share of States' Medicaid DSH payments resulting from the application of the provisions of the Medicaid statute

relating to the calculation of States' FY DSH allotments and the increase in the FY DSH allotments from FY 2010 to FY 2011.

TABLE—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE FY 2010 TO FY 2012

[In millions]

Category	Transfers
Annualized Monetized Transfers	$54.
From Whom To Whom?	Federal Government to States.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 14, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 11, 2012.

Kathleen Sebelius,

Secretary.

Addendum

This addendum contains the charts 1 through 6 (preceded by associated keys) that are referred to in the preamble of this notice.

Key to Chart 1. Final DSH Allotments for FY 2010

KEY TO CHART 1—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2010

[The Final FY 2010 DSH Allotments for the NON-Low DSH States are presented in the top section of this chart, and the Final FY 2010 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 1.
Columns C–N	For all States, the entries in Columns B through K present the determination of the final FY 2010 DSH allotments as would be calculated *without* the application of section 1923(f)(3)(E) of the Act as amended by section 5002 of ARRA. For all States, the entries in Columns L through N present the calculation of the final FY 2010 DSH Allotments, determined in accordance with the provisions of section 5002 of ARRA. For Non-Low DSH States indicated in the top portion of Chart 1, entries in Columns C through K are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these Columns indicate "na", and for States for which such test is not applicable, these Columns indicate "na". For Low DSH States, entries are in the bottom portion of Chart 1.
Column C	FY 2010 FMAPS. This column contains the States' FY 2009 Federal Medical Assistance Percentages.
Column D	FY 2009 DSH Allotment for States Meeting Test. This column contains the States' prior FY 2009 DSH Allotments.
Column E	FY 2009 Allotments X (1 + Percentage Increase in CPI–U): 1.00. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (0.0 percent).
Column F	FY 2010 TC MAP Exp. Incl. DSH. This column contains the amount of the States' actual FY 2010 total computable medical assistance expenditures including DSH expenditures.
Column G	FY 2010 TC MAP Exp. Net of DSH. This column contains the amount of the States' actual FY 2010 total computable DSH expenditures.
Column H	FY 2010 TC MAP Exp. Net of DSH. This column contains the amount of the States' actual FY 2010 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G.
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2009 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2009) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I.
Column K	FY 2010 DSH Allotment. This column contains the States' FY 2010 DSH allotments as would be determined without the application of the provisions of section 5002 of ARRA, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section: 1923(f)(6) of the Act.
Column L	FY 2009 DSH Allotment Under ARRA. This column contains the State's FY 2009 DSH allotment as determined in accordance with section 5002 of ARRA.
Column M	FY 2010 DSH Allotment Under ARRA. This column contains the State's FY 2010 DSH allotment as determined in accordance section 5002 of ARRA, and calculated as the amount in Column L multiplied by 102.5 percent.

KEY TO CHART 1—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2010—Continued

[The Final FY 2010 DSH Allotments for the NON-Low DSH States are presented in the top section of this chart, and the Final FY 2010 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column N	FY 2010 DSH Allotment. (Max of Col K or M). This column contains the State's final FY 2010 DSH allotment as determined as the higher of the amount in Column K (the FY 2010 DSH allotment as determined without the application of section 5002 of ARRA) and the amount in Column M (102.5 percent of the amount of the State's FY 2009 DSH allotment determined in accordance with section 5002 of ARRA).

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CHART 1 - FINAL DSH ALLOTMENTS FOR FISCAL YEAR: FY 2010 DSH ALLOMTENT UNDER ARRA

A	B	C	D	E	F	G	H	I	J	K	L	M	N
STATE	1923(f)(3)(D) Test Met /1	FY 2010 FMAPS	FY 2009 DSH Allotment For States Meeting Test /2	FY 2009 Allotments x CPIU Increase: 1.00	FY 2010 TC MAP Exp. Incl. DSH	FY 2010 TC DSH Expenditures	FY 2010 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2009 Allotment or 12% Limit (MAX of D or I)	FY 2010 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E	FY 2009 DSH ALLOTMENT UNDER ARRA	FY 2010 DSH ALLOTMENT UNDER ARRA Col L x 1.025	FY 2010 DSH ALLOTMENT (= Max of Col K or M
ALABAMA	YES	68.01%	$302,384,578	$302,384,578	$4,832,826,791	$467,126,595	$4,365,700,196	$638,124,843	$838,124,843	$302,384,578	$309,944,192	$317,692,797	$317,692,797
ARIZONA	YES	85.75%	$99,565,854	$99,565,854	$9,380,405,844	$28,474,900	$9,351,930,144	$1,372,778,350	$1,372,778,350	$99,565,854	$102,054,795	$104,606,185	$104,606,185
CALIFORNIA	YES	50.00%	$1,078,013,311	$1,078,013,311	$41,843,408,791	$2,157,127,708	$39,486,281,083	$6,234,875,960	$6,234,875,960	$1,078,013,311	$1,104,963,644	$1,132,587,735	$1,132,587,735
COLORADO	YES	50.00%	$90,961,214	$90,961,214	$4,028,039,849	$200,031,066	$3,828,008,783	$604,422,436	$604,422,436	$90,961,214	$93,235,244	$95,566,125	$95,566,125
CONNECTICUT	YES	50.00%	$196,872,896	$196,872,896	$5,528,407,156	$268,879,122	$5,259,728,034	$830,483,374	$830,483,374	$196,872,896	$201,589,718	$206,829,461	$206,829,461
DISTRICT OF COLUMBIA	YES	70.00%	$60,231,074	$60,231,074	$1,772,035,504	$66,913,105	$1,705,122,399	$246,948,781	$246,948,781	$60,231,074	$61,736,851	$63,280,272	$63,280,272
FLORIDA	YES	54.98%	$196,672,896	$196,872,896	$17,261,512,830	$375,826,593	$18,885,686,037	$2,592,019,595	$2,592,019,595	$196,872,896	$201,589,718	$206,829,461	$206,829,461
GEORGIA	YES	65.10%	$264,279,204	$284,279,204	$7,710,755,859	$434,584,421	$7,276,171,238	$1,070,460,447	$1,070,460,447	$264,279,204	$270,886,184	$277,858,339	$277,856,339
HAWAII*	na	na	na	na	na	na	na	na	na	$10,000,000	$0	$0	$10,000,000
ILLINOIS	YES	50.17%	$211,423,363	$211,423,363	$15,196,188,373	$564,870,009	$14,631,298,364	$2,307,735,821	$2,307,735,821	$211,423,363	$218,708,947	$222,126,871	$222,126,871
INDIANA	YES	65.93%	$210,194,158	$210,194,158	$5,879,119,164	$155,788,733	$5,723,330,431	$839,819,897	$839,819,897	$210,194,156	$215,449,012	$220,835,237	$220,835,237
KANSAS	YES	60.38%	$40,563,785	$40,563,785	$2,407,976,071	$68,217,357	$2,339,756,714	$350,412,479	$350,412,479	$40,563,785	$41,577,880	$42,617,327	$42,617,327
KENTUCKY	YES	70.96%	$142,587,850	$142,587,850	$5,522,072,269	$211,102,815	$5,310,969,474	$787,027,939	$787,027,939	$142,587,850	$146,152,546	$149,806,360	$149,806,360
LOUISIANA	NOT MET	na	na	na	na	na	na	na	na	$731,960,000	$750,259,000	$769,015,475	$769,015,475
MAINE	YES	64.99%	$103,253,270	$103,253,270	$2,266,424,935	$49,680,874	$2,218,744,061	$326,249,171	$326,249,171	$103,253,270	$105,834,602	$108,480,467	$108,480,467
MARYLAND	YES	50.00%	$74,981,542	$74,981,542	$7,011,557,299	$112,904,811	$6,898,652,688	$1,089,260,951	$1,089,260,951	$74,981,542	$76,856,081	$78,777,483	$78,777,483
MASSACHUSETTS	YES	50.00%	$299,926,166	$299,926,166	$11,595,044,370	$0	$11,595,044,370	$1,830,796,479	$1,830,796,479	$299,926,186	$307,424,320	$315,109,928	$315,109,928
MICHIGAN	YES	63.19%	$260,591,587	$260,591,587	$11,556,478,852	$378,966,410	$11,179,512,242	$1,856,026,874	$1,858,026,874	$260,591,567	$267,106,377	$273,784,036	$273,784,036
MISSISSIPPI	YES	75.87%	$149,963,083	$149,963,083	$4,106,064,588	$208,213,247	$3,897,851,341	$555,898,372	$555,898,372	$149,963,083	$153,712,160	$157,554,964	$157,554,964
MISSOURI	YES	64.51%	$465,868,922	$465,868,922	$7,993,889,980	$738,829,930	$7,255,040,050	$1,069,562,294	$1,069,562,294	$465,868,922	$477,515,645	$489,453,536	$489,453,536
NEVADA	YES	50.18%	$45,480,607	$45,480,607	$1,505,286,119	$95,232,395	$1,410,053,724	$222,418,021	$222,418,021	$45,480,607	$46,617,622	$47,783,063	$47,783,063
NEW HAMPSHIRE	YES	50.00%	$157,435,200	$157,435,200	$1,318,821,083	$230,179,521	$1,088,441,562	$171,859,194	$171,859,194	$157,435,200	$161,371,080	$165,405,357	$165,405,357
NEW JERSEY	YES	50.00%	$633,040,884	$633,040,884	$10,162,873,296	$1,340,385,742	$6,822,487,554	$1,393,024,351	$1,393,024,351	$633,040,884	$648,866,906	$665,088,579	$665,088,579
NEW YORK	YES	50.00%	$1,579,529,196	$1,579,529,196	$50,453,082,673	$3,117,352,830	$47,335,729,843	$7,474,062,607	$7,474,062,607	$1,579,529,196	$1,619,017,426	$1,659,492,862	$1,659,492,862
NORTH CAROLINA	YES	65.13%	$290,092,522	$290,092,522	$10,319,106,418	$467,893,030	$9,851,213,386	$1,449,146,308	$1,449,146,308	$290,092,522	$297,344,835	$304,778,456	$304,778,456
OHIO	YES	63.42%	$399,491,820	$399,491,820	$15,121,647,578	$656,437,448	$14,465,210,128	$2,140,918,815	$2,140,918,815	$399,491,820	$409,479,116	$419,718,094	$419,718,094
PENNSYLVANIA	YES	54.81%	$551,913,314	$551,913,314	$18,834,048,432	$844,422,175	$17,789,826,257	$2,733,144,822	$2,733,144,822	$551,913,314	$565,711,147	$579,853,926	$579,853,926

A	B	C	D	E	F	G	H	I	J	K	L	M	N
STATE	1923(f)(3)(D) Test Met /1	FY 2010 FMAPS	FY 2009 DSH Allotment For States Meeting Test /2	FY 2009 Allotments x CPIU Increase: 1.00	FY 2010 TC MAP Exp. Incl. DSH	FY 2010 TC DSH Expenditures	FY 2010 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2009 Allotment or 12% Limit (MAX of D or I)	FY 2010 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E	FY 2009 DSH ALLOTMENT UNDER ARRA	FY 2010 DSH ALLOTMENT UNDER ARRA Col L x 1.025	FY 2010 DSH ALLOTMENT (= Max of Col K or M
RHODE ISLAND	YES	52.63%	$63,918,691	$63,918,891	$1,912,007,222	$124,795,467	$1,787,211,755	$277,807,397	$277,807,397	$63,918,891	$65,518,658	$67,154,574	$67,154,574
SOUTH CAROLINA	YES	70.32%	$322,051,867	$322,051,867	$4,992,150,984	$418,142,174	$4,574,008,810	$661,819,546	$661,819,546	$322,051,667	$330,103,164	$338,355,743	$338,355,743
TENNESSEE*	na	na	na	na	na	na	na	na	na	$305,451,928	$0	$0	$305,451,928
TEXAS	YES	58.73%	$940,342,284	$940,342,284	$26,330,887,310	$1,688,246,076	$24,642,441,234	$3,718,457,711	$3,718,457,711	$940,342,284	$963,850,841	$987,947,112	$987,947,112
VERMONT	YES	58.73%	$22,125,701	$22,125,701	$1,247,368,784	$38,548,781	$1,210,819,983	$182,610,206	$182,610,206	$22,125,701	$22,878,844	$23,245,815	$23,245,815
VIRGINIA	YES	50.00%	$86,150,177	$86,150,177	$6,407,859,287	$198,720,152	$6,209,139,135	$980,390,390	$980,390,390	$86,150,177	$88,303,931	$90,511,529	$90,511,529
WASHINGTON	YES	50.12%	$181,922,429	$181,922,429	$6,988,870,974	$368,089,934	$6,820,781,040	$1,044,596,681	$1,044,596,681	$181,922,429	$186,470,490	$191,132,252	$191,132,252
WEST VIRGINIA	YES	74.04%	$88,377,102	$86,377,102	$2,538,797,193	$73,974,744	$2,464,822,449	$352,989,273	$352,989,273	$66,377,102	$88,038,530	$89,737,443	$69,737,443
TOTAL			$9,588,008,347	$9,588,008,347	$323,824,574,474	$18,145,757,985	$307,478,818,489	$47,181,744,784	$47,181,744,764	$10,835,418,275	$10,577,965,506	$10,842,414,644	$11,157,866,572
LOW DSH STATES		FY 2010 FMAPS	Prior FY 2009 Allotments										
ALASKA		51.43%	$20,030,833	$20,030,833	$1,207,521,822	$24,563,605	$1,182,958,217	$185,157,112	$185,157,112	$20,030,833	$20,531,604	$21,044,894	$21,044,894
ARKANSAS		72.78%	$42,420,163	$42,420,163	$3,860,864,888	$60,911,385	$3,619,953,521	$548,896,778	$548,896,778	$42,420,163	$43,480,667	$44,567,684	$44,567,684
DELAWARE		50.21%	$8,902,592	$8,902,592	$1,288,830,608	$8,294,243	$1,280,536,365	$201,923,258	$201,923,258	$8,902,592	$9,125,157	$9,353,288	$9,353,288
IDAHO		89.40%	$18,184,055	$16,164,055	$1,345,242,339	$23,873,424	$1,321,388,915	$191,713,594	$191,713,594	$18,164,055	$18,568,156	$18,982,360	$18,982,380
IOWA		63.51%	$38,728,014	$38,728,014	$3,046,870,401	$48,964,498	$2,997,705,905	$443,527,786	$443,527,788	$38,728,014	$39,894,164	$40,886,518	$40,886,518
MINNESOTA		50.00%	$73,448,387	$73,448,387	$7,498,239,705	$109,024,479	$7,387,215,228	$1,166,402,404	$1,188,402,404	$73,446,387	$75,282,547	$77,164,611	$77,164,611
MONTANA		67.42%	$11,181,950	$11,181,950	$927,990,258	$17,393,381	$910,596,897	$132,932,031	$132,932,031	$11,181,950	$11,440,999	$11,727,024	$11,727,024
NEBRASKA		60.56%	$27,827,466	$27,827,466	$1,595,294,737	$47,748,534	$1,547,548,203	$231,596,635	$231,596,635	$27,627,468	$28,523,153	$29,236,232	$29,236,232
NEW MEXICO		71.35%	$20,030,833	$20,030,833	$3,456,995,131	$29,207,929	$3,427,787,202	$494,502,342	$494,502,342	$20,030,833	$20,531,604	$21,044,894	$21,044,894
NORTH DAKOTA		83.01%	$9,393,079	$9,393,079	$882,210,888	$1,745,030	$680,465,856	$100,865,290	$100,885,290	$9,393,079	$9,827,906	$9,868,604	$9,868,604
OKLAHOMA		64.43%	$35,610,368	$35,610,388	$3,681,876,770	$40,398,623	$3,821,480,147	$563,535,302	$563,535,302	$35,810,368	$38,500,827	$37,413,143	$37,413,143
OREGON		62.74%	$44,512,961	$44,512,961	$3,973,078,563	$54,379,244	$3,918,699,319	$581,456,512	$581,456,512	$44,512,961	$45,625,785	$46,786,430	$46,766,430

A	B	C	D	E	F	G	H	I	J	K	L	M	N
STATE	1923(f)(3)(D) Test Met /1	FY 2010 FMAPS	FY 2009 DSH Allotment For States Meeting Test /2	FY 2009 Allotments x CPIU Increase: 1.00	FY 2010 TC MAP Exp. Incl. DSH	FY 2010 TC DSH Expenditures	FY 2010 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2009 Allotment or 12% Limit (MAX of D or I)	FY 2010 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E	FY 2009 DSH ALLOTMENT UNDER ARRA	FY 2010 DSH ALLOTMENT UNDER ARRA Col L x 1.025	FY 2010 DSH ALLOTMENT (= Max of Col K or M
SOUTH DAKOTA		82.72%	$10,860,913	$10,860,913	$775,170,127	$648,496	$774,521,631	$114,932,189	$114,932,189	$10,860,913	$11,132,436	$11,410,747	$11,410,747
UTAH		71.68%	$19,291,826	$19,291,626	$1,667,188,908	$26,849,118	$1,660,339,788	$239,302,593	$239,302,593	$19,291,626	$19,773,919	$20,266,267	$20,266,267
WISCONSIN		60.21%	$92,960,219	$92,960,219	$6,431,517,340	$3,956,666	$6,427,560,674	$963,294,159	$963,294,159	$92,960,219	$95,284,224	$97,666,330	$97,886,330
WYOMING		50.00%	$222,564	$222,564	$529,751,394	$801,851	$528,949,543	$63,516,349	$63,516,349	$222,564	$226,128	$233,631	$233,831
TOTAL LOW DSH STATES			$471,562,025	$471,562,025	$42,184,443,873	$496,756,464	$41,687,867,409	$6,243,556,512	$6,243,556,512	$471,562,025	$483,351,076	$495,434,855	$495,434,655
TOTAL			$10,059,568,372	$10,059,568,372	$365,809,016,347	$16,642,514,449	$349,186,503,898	$53,425,301,277	$53,425,301,277	$11,108,980,300	$11,061,318,562	$11,337,849,499	$11,853,301,427

FOOTNOTES:

/1 "YES", if FY 2010 or prior fiscal year is the "Fiscal Year Specified", as determined under section 1923(f)(3)(D) of the Social Security Act; "NOT MET", if Fiscal Year Specified has not occurred, and "NA" for States that this provision is not applicable.

/2 For Non-Low DSH States, entries in Columns C through Column K are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B). The entry in Column D is the actual prior year (FY 2009) DSH allotment, and for States that FY 2010 is the Fiscal Year Specified, the prior FY 2009 DSH allotment was equal to the FY 2004 allotment.

/3 Hawaii and Tennessee DSH allotments determined under section 1923(f)(6) of the Act; under this section, Tennessee's DSH payments are limited to 30% of DSH allotment.

Key to Chart 2. Final DSH Allotments for FY 2011

KEY TO CHART 2—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2011

[The Final FY 2011 DSH Allotments for the NON–Low DSH States are presented in the top section of this chart, and the Final FY 2011 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 3.
Columns C–K	For all States, the entries in Columns B through K present the determination of the final FY 2011 DSH allotments as would be calculated *without* the application of section 5002 of ARRA since such provisions were only applicable for FY 2009 and FY 2010. For Non-Low DSH States indicated in the top portion of Chart 2, entries in Columns C through J are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these Columns indicate "NA", and for States for which such test is not applicable, these Columns indicate "na". For Low DSH States, entries are in the bottom portion of Chart 2.
Column C	FY 2011 FMAPS. This column contains the States' FY 2011 Federal Medical Assistance Percentages.
Column D	FY 2010 DSH Allotment for States Meeting Test. This column contains the States' prior FY 2010 DSH Allotments as would be determined without the application of section 5002 of ARRA.
Column E	FY 2010 Allotments X (1 + Percentage Increase in CPI–U): 1.017. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (1.7 percent).
Column F	FY 2011 TC MAP Exp. Incl. DSH. This column contains the amount of the States' projected FY 2011 total computable medical assistance expenditures including DSH expenditures.
Column G	FY 2011 TC DSH Expenditures. This column contains the amount of the States' projected FY 2011 total computable DSH expenditures.
Column H	FY 2011 TC MAP Exp. Net of DSH. This column contains the amount of the States' projected FY 2011 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G.
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2010 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2010) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I.
Column K	FY 2011 DSH Allotment. This column contains the States' FY 2011 DSH allotments as would be determined without the application of the provisions of section 5002 of ARRA, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section 1923(f)(6) of the Act.

BILLING CODE P

CHART 2 - FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2011

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2011 FMAPS	FY 2010 DSH Allotment For States Meeting Test /2, /3	FY 2010 Allotments x CPIU Increase: 1.017	FY 2011 TC MAP Exp. Incl. DSH	FY 2011 TC DSH Expenditures	FY 2011 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2010 Allotment or 12% Limit (MAX of D or I)	FY 2011 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
ALABAMA	YES	68.54%	$302,384,578	$307,525,116	$4,793,247,444	$449,120,952	$4,344,126,492	$631,934,411	$631,934,411	$307,525,116
ARIZONA	YES	65.85%	$99,565,654	$101,258,270	$8,988,386,558	$165,763,665	$8,822,622,893	$1,294,640,039	$1,294,640,039	$101,258,270
CALIFORNIA	YES	50.00%	$1,078,013,311	$1,096,339,537	$54,305,789,679	$2,275,296,092	$52,030,493,587	$8,215,341,093	$8,215,341,093	$1,096,339,537
COLORADO	YES	50.00%	$90,961,214	$92,507,555	$4,348,993,638	$185,015,110	$4,163,978,528	$657,470,294	$657,470,294	$92,507,555
CONNECTICUT	YES	50.00%	$196,672,896	$200,016,335	$5,812,369,379	$201,419,483	$5,610,949,896	$885,939,457	$885,939,457	$200,016,335
DISTRICT OF COLUMBIA	YES	70.00%	$60,231,074	$61,255,002	$2,129,496,913	$73,326,528	$2,056,170,385	$297,790,194	$297,790,194	$61,255,002
FLORIDA	YES	55.45%	$196,672,896	$200,016,335	$18,127,940,651	$350,105,390	$17,777,835,261	$2,722,525,105	$2,722,525,105	$200,016,335
GEORGIA	YES	65.33%	$264,279,204	$268,771,950	$8,064,611,365	$410,126,151	$7,654,485,214	$1,125,222,244	$1,125,222,244	$268,771,950
HAWAII* /4	na	na	na	na	na	na	na	na	na	$10,000,000
ILLINOIS	YES	50.20%	$211,423,363	$215,017,560	$12,835,985,780	$409,833,294	$12,426,152,486	$1,959,558,706	$1,959,558,706	$215,017,560
INDIANA	YES	66.52%	$210,194,158	$213,767,459	$6,566,449,764	$326,730,322	$6,239,719,442	$913,571,836	$913,571,836	$213,767,459
KANSAS	YES	59.05%	$40,563,785	$41,253,369	$2,669,175,687	$69,861,760	$2,599,313,927	$391,471,594	$391,471,594	$41,253,369
KENTUCKY	YES	71.49%	$142,587,850	$145,011,843	$5,652,087,484	$202,842,136	$5,449,245,348	$785,812,506	$785,812,506	$145,011,843
LOUISIANA	NOT MET	na	na	na	na	na	na	na	na	$731,960,000
MAINE	YES	63.80%	$103,253,270	$105,008,576	$2,356,177,543	$51,536,880	$2,304,640,663	$340,624,110	$340,624,110	$105,008,576
MARYLAND	YES	50.00%	$74,981,542	$76,256,228	$7,319,542,445	$88,352,109	$7,231,190,336	$1,141,766,895	$1,141,766,895	$76,256,228
MASSACHUSETTS	YES	50.00%	$299,926,166	$305,024,911	$13,007,366,707	$0	$13,007,366,707	$2,053,794,743	$2,053,794,743	$305,024,911
MICHIGAN	YES	65.79%	$260,591,587	$265,021,644	$12,062,932,510	$387,852,156	$11,675,080,354	$1,713,560,595	$1,713,560,595	$265,021,644
MISSISSIPPI	YES	74.73%	$149,963,083	$152,512,455	$4,410,842,108	$204,084,644	$4,206,757,464	$601,379,216	$601,379,216	$152,512,455
MISSOURI	YES	63.29%	$465,868,922	$473,788,694	$8,011,172,212	$699,597,196	$7,311,575,016	$1,082,666,210	$1,082,666,210	$473,788,694
NEVADA	YES	51.61%	$45,480,607	$46,253,777	$1,562,938,792	$88,358,886	$1,474,579,906	$230,557,139	$230,557,139	$46,253,777
NEW HAMPSHIRE	YES	50.00%	$157,435,200	$160,111,598	$1,348,154,355	$148,617,573	$1,199,536,782	$189,400,545	$189,400,545	$160,111,598
NEW JERSEY	YES	50.00%	$633,040,884	$643,802,579	$10,501,136,233	$1,269,857,523	$9,231,278,710	$1,457,570,323	$1,457,570,323	$643,802,579
NEW YORK	YES	50.00%	$1,579,529,196	$1,606,381,192	$51,711,675,845	$3,158,222,542	$48,553,453,303	$7,666,334,732	$7,666,334,732	$1,606,381,192
NORTH CAROLINA	YES	64.71%	$290,092,522	$295,024,095	$10,297,057,563	$408,931,874	$9,888,125,689	$1,456,711,698	$1,456,711,698	$295,024,095
OHIO	YES	63.69%	$399,491,820	$406,283,181	$15,533,331,022	$662,908,943	$14,870,422,079	$2,198,716,616	$2,198,716,616	$406,283,181
PENNSYLVANIA	YES	55.64%	$551,913,314	$561,295,840	$20,395,014,723	$869,302,325	$19,525,712,398	$2,987,380,306	$2,987,380,306	$561,295,840

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2011 FMAPS	FY 2010 DSH Allotment For States Meeting Test /2, /3	FY 2010 Allotments x CPIU Increase: 1.017	FY 2011 TC MAP Exp. Incl. DSH	FY 2011 TC DSH Expenditures	FY 2011 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2010 Allotment or 12% Limit (MAX of D or I)	FY 2011 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
RHODE ISLAND	YES	52.97%	$63,918,691	$65,005,309	$2,098,664,704	$122,720,991	$1,975,943,713	$306,563,061	$306,563,061	$65,005,309
SOUTH CAROLINA	YES	70.04%	$322,051,867	$327,526,749	$4,930,814,886	$530,651,697	$4,400,163,189	$637,189,724	$637,189,724	$327,526,749
TENNESSEE* /4	na	na	na	na	na	na	na	na	na	$305,451,928
TEXAS	YES	60.56%	$940,342,284	$956,328,103	$27,847,444,279	$1,579,141,499	$26,268,302,780	$3,931,157,536	$3,931,157,536	$956,328,103
VERMONT	YES	58.71%	$22,125,701	$22,501,838	$1,281,883,083	$37,448,782	$1,244,434,301	$187,696,179	$187,696,179	$22,501,838
VIRGINIA	YES	50.00%	$86,150,177	$87,614,730	$6,893,824,841	$195,252,578	$6,698,572,263	$1,057,669,305	$1,057,669,305	$87,614,730
WASHINGTON	YES	50.00%	$181,922,429	$185,015,110	$7,334,958,500	$348,853,464	$6,986,105,036	$1,103,069,216	$1,103,069,216	$185,015,110
WEST VIRGINIA	YES	73.24%	$66,377,102	$67,505,513	$2,740,221,609	$73,313,008	$2,666,908,601	$382,738,836	$382,738,836	$67,505,513
TOTAL			$9,588,006,347	$9,751,002,455	$345,939,688,302	$16,044,445,553	$329,895,242,749	$50,607,824,463	$50,607,824,463	$10,798,414,381
LOW DSH STATES		FY 2011 FMAPS	Prior FY 2010 Allotments							
ALASKA		50.00%	$20,030,833	$20,371,357	$1,290,457,318	$15,200,649	$1,275,256,669	$201,356,316	$201,356,316	$20,371,357
ARKANSAS		71.37%	$42,420,163	$43,141,306	$3,951,827,218	$62,042,792	$3,889,784,426	$561,119,585	$561,119,585	$43,141,306
DELAWARE		53.15%	$8,902,592	$9,053,936	$1,391,676,715	$5,626,975	$1,386,049,740	$214,829,289	$214,829,289	$9,053,936
IDAHO		68.85%	$16,164,055	$16,438,844	$1,514,685,207	$24,665,737	$1,490,019,470	$216,544,254	$216,544,254	$16,438,844
IOWA		62.63%	$38,726,014	$39,384,356	$3,317,142,942	$81,897,436	$3,235,245,506	$480,245,134	$480,245,134	$39,384,356
MINNESOTA		50.00%	$73,446,387	$74,694,976	$8,271,183,374	$89,416,037	$8,181,767,337	$1,291,858,001	$1,291,858,001	$74,694,976
MONTANA		66.81%	$11,161,950	$11,351,703	$954,479,434	$16,991,023	$937,488,411	$137,128,847	$137,128,847	$11,351,703
NEBRASKA		58.44%	$27,827,466	$28,300,533	$1,637,255,773	$38,509,947	$1,598,745,826	$241,423,013	$241,423,013	$28,300,533
NEW MEXICO		69.78%	$20,030,833	$20,371,357	$3,317,620,410	$29,106,046	$3,288,514,364	$476,578,468	$476,578,468	$20,371,357
NORTH DAKOTA		60.35%	$9,393,079	$9,552,761	$701,893,360	$1,805,893	$700,087,467	$104,861,085	$104,861,085	$9,552,761
OKLAHOMA		64.94%	$35,610,368	$36,215,744	$4,008,275,083	$43,979,398	$3,964,295,685	$583,546,721	$583,546,721	$36,215,744
OREGON		62.85%	$44,512,961	$45,269,681	$4,386,322,933	$52,920,939	$4,333,401,994	$642,724,048	$642,724,048	$45,269,681
SOUTH DAKOTA		61.25%	$10,860,913	$11,045,549	$750,185,483	$537,729	$749,647,754	$111,876,365	$111,876,365	$11,045,549
UTAH		71.13%	$19,291,628	$19,619,586	$1,733,301,867	$23,971,578	$1,709,330,289	$246,747,161	$246,747,161	$19,619,586
WISCONSIN		60.16%	$92,960,219	$94,540,543	$6,878,408,081	$100	$6,878,407,981	$1,031,075,642	$1,031,075,642	$94,540,543

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2011 FMAPS	FY 2010 DSH Allotment For States Meeting Test /2, /3	FY 2010 Allotments x CPIU Increase: 1.017	FY 2011 TC MAP Exp. Incl. DSH	FY 2011 TC DSH Expenditures	FY 2011 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2010 Allotment or 12% Limit (MAX of D or I)	FY 2011 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
WYOMING		50.00%	$222,564	$226,348	$527,161,771	$759,731	$526,402,040	$83,116,112	$83,116,112	$226,348
TOTAL LOW DSH STATES			$471,562,025	$479,578,579	$44,631,876,969	$487,432,010	$44,144,444,959	$6,625,030,039	$6,625,030,039	$479,578,580
TOTAL			$10,059,568,372	$10,230,581,034	$390,571,565,271	$16,531,877,563	$374,039,687,708	$57,232,854,502	$57,232,854,502	$11,277,992,961

FOOTNOTES:

/1 'YES', if FY 2010 or other prior fiscal year is the 'Fiscal Year Specified', as determined under section 1923(f)(3)(D) of the Social Security Act; and 'NOT MET', if the 'Fiscal Year Specified' has not occurred, and NA for States for which this provision is not applicable.

/2 For Non-Low DSH States, entries in Columns C through Column K are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B) in this fiscal year or a prior fiscal year; the entry in Column D is the actual prior year DSH allotment for such States. For States not meeting such test, the prior fiscal year allotment would be equal to the FY 2004 allotment.

/3 The DSH Allotments in Column D are not the actual FY 2010 DSH Allotments; rather, under section 1923(f)(3) of the Social Security Act, they are the allotments as would have been determined without regard to section 5002 of P.L. 111-5.

/4 Hawaii and Tennessee DSH allotments determined under section 1923(f)(6) of the Act; under such section, Tennessee's DSH payments are limited to 30% of the DSH allotment.

Key to Chart 3—Preliminary DSH Allotments for FY 2012

KEY TO CHART 3—PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2012

[The Preliminary FY 2012 DSH Allotments for the NON-Low DSH States are presented in the top section of this chart, and the Preliminary FY 2012 DSH Allotments for the Low-DSH States are presented in the bottom section of this chart]

Column	Description
Column A	State.
Column B	1923(f)(3)(D) Test Met. This column indicates whether the "FY Specified" has occurred with respect to Non-Low DSH States, determined in accordance with section 1923(f)(3)(D) of the Act. "YES" indicates the FY Specified has occurred; "NOT MET" indicates that the FY Specified has not occurred; and "na" indicates that this provision is not applicable. This provision is not applicable for Low-DSH States indicated in the bottom portion of chart 3.
Columns C–K	For Non-Low DSH States indicated in the top portion of Chart 3, entries in Columns C through J are only for States meeting the "FY Specified" test ("YES" in Column B). For States not meeting the test indicated in Column B, these Columns indicate "na," and for States for which such test is not applicable, these Columns indicate "na." For Low DSH States, entries are in the bottom portion of Chart 3.
Column C	FY 2012 FMAPS. This column contains the States' FY 2012 Federal Medical Assistance Percentages.
Column D	FY 2011 DSH Allotment For States Meeting Test. This column contains the States' prior FY 2010 DSH Allotments as would be determined without the application of section 5002 of ARRA.
Column E	FY 2011 Allotments X (1 + Percentage Increase in CPI–U): 1.024. This column contains the amount in Column D increased by 1 plus the percentage increase in the CPI–U for the prior FY (1.024 percent).
Column F	FY 2012 TC MAP Exp. Incl. DSH. This column contains the amount of the States' projected FY 2012 total computable medical assistance expenditures including DSH expenditures.
Column G	FY 2012 TC DSH Expenditures. This column contains the amount of the States' projected FY 2012 total computable DSH expenditures.
Column H	FY 2012 TC MAP Exp. Net of DSH. This column contains the amount of the States' projected FY 2012 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column F minus the amount in Column G
Column I	12% AMOUNT. This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column J	Greater of FY 2010 Allotment or 12% Limit. This column contains the greater of the State's prior FY (FY 2011) DSH allotment or the amount of the 12% Limit, determined as the maximum of the amount in Column D or Column I
Column K	FY 2012 DSH Allotment. This column contains the States' preliminary FY 2012 DSH allotments, determined as the minimum of the amount in Column J or Column E. For Non-Low DSH States that have not met the "FY Specified" test (entry in Column B is "NOT MET"), the amount in Column K is equal to the State's FY 2004 DSH allotment. For States for which the entry in Column B is "na", the amount in Column K is determined in accordance with the provisions of section 1923(f)(6) of the Act.

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CHART 3 - PRELIMINARY DSH ALLOTMENTS FOR FISCAL YEAR: 2012

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2012 FMAPS	FY 2011 DSH Allotment For States Meeting Test /2, /3	FY 2011 Allotments x CPIU Increase: 1.024	FY 2012 TC MAP Exp. Incl. DSH	FY 2012 TC DSH Expenditures	FY 2012 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2011 Allotment or 12% Limit (MAX of D or I)	FY 2012 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
ALABAMA	YES	68.62%	$307,525,116	$314,905,719	$5,543,737,000	$448,597,000	$5,095,140,000	$741,000,014	$741,000,014	$314,905,719
ARIZONA	YES	67.30%	$101,258,270	$103,688,468	$8,509,683,000	$153,317,000	$8,356,366,000	$1,220,361,877	$1,220,361,877	$103,688,468
CALIFORNIA	YES	50.00%	$1,096,339,537	$1,122,651,686	$57,013,025,000	$808,605,000	$56,204,420,000	$8,874,382,105	$8,874,382,105	$1,122,651,686
COLORADO	YES	50.00%	$92,507,555	$94,727,736	$4,626,831,000	$188,635,000	$4,438,196,000	$700,767,789	$700,767,789	$94,727,736
CONNECTICUT	YES	50.00%	$200,016,335	$204,816,727	$5,886,028,000	$136,848,000	$5,749,180,000	$907,765,263	$907,765,263	$204,816,727
DISTRICT OF COLUMBIA	YES	70.00%	$61,255,002	$62,725,122	$2,059,009,000	$69,379,000	$1,989,630,000	$288,153,310	$288,153,310	$62,725,122
FLORIDA	YES	56.04%	$200,016,335	$204,816,727	$18,911,586,000	$384,827,000	$18,526,759,000	$2,828,990,666	$2,828,990,666	$204,816,727
GEORGIA	YES	66.16%	$268,771,950	$275,222,477	$8,080,995,000	$440,879,000	$7,640,116,000	$1,119,948,467	$1,119,948,467	$275,222,477
HAWAII* /4	na	na	na	na	na	na	na	na	na	$10,000,000
ILLINOIS	YES	50.00%	$215,017,560	$220,177,981	$13,932,435,000	$428,744,000	$13,503,691,000	$2,132,161,737	$2,132,161,737	$220,177,981
INDIANA	YES	66.96%	$213,767,459	$218,897,878	$7,777,312,000	$320,489,000	$7,456,823,000	$1,090,194,035	$1,090,194,035	$218,897,878
KANSAS	YES	56.91%	$41,253,369	$42,243,450	$2,813,694,000	$70,400,000	$2,743,294,000	$417,156,611	$417,156,611	$42,243,450
KENTUCKY	YES	71.18%	$145,011,843	$148,492,127	$6,388,433,000	$207,429,000	$6,181,004,000	$892,120,037	$892,120,037	$148,492,127
LOUISIANA	NOT MET	na	na	na	na	na	na	na	na	$731,960,000
MAINE	YES	63.27%	$105,008,576	$107,528,782	$2,127,018,000	$52,760,000	$2,074,258,000	$307,169,815	$307,169,815	$107,528,782
MARYLAND	YES	50.00%	$76,256,228	$78,086,377	$8,449,938,000	$92,561,000	$8,357,377,000	$1,319,585,842	$1,319,585,842	$78,086,377
MASSACHUSETTS	YES	50.00%	$305,024,911	$312,345,509	$13,616,213,000	$0	$13,616,213,000	$2,149,928,368	$2,149,928,368	$312,345,509
MICHIGAN	YES	66.14%	$265,021,644	$271,382,163	$12,493,693,000	$399,654,000	$12,094,039,000	$1,772,958,418	$1,772,958,418	$271,382,163
MISSISSIPPI	YES	74.18%	$152,512,455	$156,172,754	$5,224,836,000	$215,553,000	$5,009,283,000	$717,121,800	$717,121,800	$156,172,754
MISSOURI	YES	63.45%	$473,788,694	$485,159,623	$9,212,344,000	$725,169,000	$8,487,175,000	$1,256,002,924	$1,256,002,924	$485,159,623
NEVADA	YES	56.20%	$46,253,777	$47,363,868	$1,709,101,000	$82,383,000	$1,626,718,000	$248,203,308	$248,203,308	$47,363,868
NEW HAMPSHIRE	YES	50.00%	$160,111,598	$163,954,276	$1,291,538,000	$68,979,000	$1,222,559,000	$193,035,632	$193,035,632	$163,954,276
NEW JERSEY	YES	50.00%	$643,802,579	$659,253,841	$11,348,953,000	$1,288,871,000	$10,060,082,000	$1,588,434,000	$1,588,434,000	$659,253,841
NEW YORK	YES	50.00%	$1,606,381,192	$1,644,934,341	$59,916,093,000	$3,215,450,000	$56,700,643,000	$8,952,733,105	$8,952,733,105	$1,644,934,341
NORTH CAROLINA	YES	65.28%	$295,024,095	$302,104,673	$11,283,445,000	$394,137,000	$10,889,308,000	$1,601,022,582	$1,601,022,582	$302,104,673
OHIO	YES	64.15%	$406,283,181	$416,033,977	$17,563,767,000	$644,733,000	$16,919,034,000	$2,497,463,542	$2,497,463,542	$416,033,977
PENNSYLVANIA	YES	55.07%	$561,295,840	$574,766,940	$21,199,808,000	$795,864,000	$20,403,944,000	$3,130,657,616	$3,130,657,616	$574,766,940

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2012 FMAPS	FY 2011 DSH Allotment For States Meeting Test /2, /3	FY 2011 Allotments x CPIU Increase: 1.024	FY 2012 TC MAP Exp. Incl. DSH	FY 2012 TC DSH Expenditures	FY 2012 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2011 Allotment or 12% Limit (MAX of D or I)	FY 2012 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
RHODE ISLAND	YES	52.12%	$65,005,309	$66,565,436	$2,242,211,000	$132,367,000	$2,109,844,000	$328,908,482	$328,908,482	$66,565,436
SOUTH CAROLINA	YES	70.24%	$327,526,749	$335,387,391	$5,184,713,000	$463,699,000	$4,721,014,000	$683,250,048	$683,250,048	$335,387,391
TENNESSEE* /4	na	na	na	na	na	na	na	na	na	$123,562,982
TEXAS	YES	58.22%	$956,328,103	$979,279,977	$30,053,163,000	$1,580,695,000	$28,472,468,000	$4,303,765,695	$4,303,765,695	$979,279,977
VERMONT	YES	57.58%	$22,501,838	$23,041,882	$1,481,074,000	$37,449,000	$1,443,625,000	$218,843,161	$218,843,161	$23,041,882
VIRGINIA	YES	50.00%	$87,614,730	$89,717,484	$7,122,814,000	$202,738,000	$6,920,076,000	$1,092,643,579	$1,092,643,579	$89,717,484
WASHINGTON	YES	50.00%	$185,015,110	$189,455,473	$8,369,624,000	$631,865,000	$7,737,759,000	$1,221,751,421	$1,221,751,421	$189,455,473
WEST VIRGINIA	YES	72.62%	$67,505,513	$69,125,645	$2,807,309,000	$91,403,000	$2,715,906,000	$390,423,808	$390,423,808	$69,125,645
TOTAL			$9,751,002,453	$9,985,026,512	$374,240,423,000	$14,774,479,000	$359,465,944,000	$55,186,905,060	$55,186,905,060	$10,850,549,492
LOW DSH STATES		FY 2012 FMAPS	Prior FY 2011 Allotments							
ALASKA		50.00%	$20,371,357	$20,860,270	$1,468,824,000	$20,365,000	$1,448,459,000	$228,704,053	$228,704,053	$20,860,270
ARKANSAS		70.71%	$43,141,306	$44,176,697	$4,357,646,000	$57,820,000	$4,299,826,000	$621,442,405	$621,442,405	$44,176,697
DELAWARE		54.17%	$9,053,936	$9,271,230	$1,428,904,000	$5,740,000	$1,423,164,000	$219,377,170	$219,377,170	$9,271,230
IDAHO		70.23%	$16,438,844	$16,833,376	$1,811,070,000	$25,406,000	$1,785,664,000	$258,438,295	$258,438,295	$16,833,376
IOWA		60.71%	$39,384,356	$40,329,581	$3,618,226,000	$53,904,000	$3,564,322,000	$533,089,687	$533,089,687	$40,329,581
MINNESOTA		50.00%	$74,694,976	$76,487,655	$9,809,425,000	$154,792,000	$9,654,633,000	$1,524,415,737	$1,524,415,737	$76,487,655
MONTANA		66.11%	$11,351,703	$11,624,144	$1,031,612,000	$17,553,000	$1,014,059,000	$148,673,681	$148,673,681	$11,624,144
NEBRASKA		56.64%	$28,300,533	$28,979,746	$1,985,088,000	$39,811,000	$1,945,277,000	$296,184,111	$296,184,111	$28,979,746
NEW MEXICO		69.36%	$20,371,357	$20,860,270	$3,940,036,000	$29,223,000	$3,910,813,000	$567,476,966	$567,476,966	$20,860,270
NORTH DAKOTA		55.40%	$9,552,761	$9,782,027	$780,902,000	$1,776,000	$779,126,000	$119,346,305	$119,346,305	$9,782,027
OKLAHOMA		63.88%	$36,215,744	$37,084,922	$4,789,962,000	$57,000,000	$4,732,962,000	$699,325,241	$699,325,241	$37,084,922
OREGON		62.91%	$45,269,681	$46,356,153	$4,778,528,000	$24,568,000	$4,753,960,000	$704,941,953	$704,941,953	$46,356,153
SOUTH DAKOTA		59.13%	$11,045,549	$11,310,642	$868,253,000	$2,406,000	$865,847,000	$130,356,545	$130,356,545	$11,310,642
UTAH		70.99%	$19,619,586	$20,090,456	$2,024,580,000	$27,390,000	$1,997,190,000	$288,416,040	$288,416,040	$20,090,456
WISCONSIN		60.53%	$94,540,543	$96,809,516	$6,823,722,000	$157,303,000	$6,666,419,000	$997,778,715	$997,778,715	$96,809,516

A	B	C	D	E	F	G	H	I	J	K
STATE	1923(f)(3)(D) Test Met /1	FY 2012 FMAPS	FY 2011 DSH Allotment For States Meeting Test /2, /3	FY 2011 Allotments x CPIU Increase: 1.024	FY 2012 TC MAP Exp. Incl. DSH	FY 2012 TC DSH Expenditures	FY 2012 TC MAP Exp. Net of DSH Col F - G	"12% AMOUNT" =COL L x .12/(1-.12/COL G)* (In FS)	Greater of FY 2011 Allotment or 12% Limit (MAX of D or I)	FY 2012 DSH Allotment =FY 04 ALLOT or MIN Col J, Col E
WYOMING		50.00%	$226,348	$231,780	$554,151,000	$453,000	$553,698,000	$87,426,000	$87,426,000	$231,780
TOTAL LOW DSH STATES			$479,578,580	$491,088,466	$50,070,929,000	$675,510,000	$49,395,419,000	$7,425,392,903	$7,425,392,903	$491,088,465
TOTAL			$10,230,581,033	$10,476,114,978	$424,311,352,000	$15,449,989,000	$408,861,363,000	$62,612,297,963	$62,612,297,963	$11,341,637,957

FOOTNOTES:

/1 'YES', if FY 2011 or other prior fiscal year is the 'Fiscal Year Specified', as determined under section 1923(f)(3)(D) of the Social Security Act; and 'NOT MET', if the 'Fiscal Year Specified' has not occurred, and NA for States for which this provision is not applicable.

/2 For Non-Low DSH States, entries in Columns C through Column K are only for States meeting the "Fiscal Year Specified" test ("YES" in Column B) in this fiscal year or a prior fiscal year; the entry in Column D is the actual prior year DSH allotment for such States. For States not meeting such test, the prior fiscal year allotment would be equal to the FY 2004 allotment.

/3 The DSH Allotments in Column D are not the actual FY 2010 DSH Allotments; rather, under section 1923(f)(3) of the Social Security Act, they are the allotments as would have been determined without regard to section 5002 of P.L. 111-5.

/4 Hawaii and Tennessee DSH allotments are determined under section 1923(f)(6) of the Act. Under this provision, Tennessee's DSH payments for FY 2012 are limited to $70,108,895

Key to Chart 4—Final IMD DSH Limit for FY 2010

KEY TO CHART 4—FINAL IMD DSH LIMT FOR FY: 2010

[Key to the Chart of the Final FY 2010 IMD Limitations.—The Final FY 2010 IMD DSH Limits for the regular States are presented in the top section of this chart and the final FY IMD DSH Limits for the Low DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col C/D. This column contains the "applicable percentage" representing the total computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D). Per section 1923(h)(2)(A)(ii)(III) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2010 Allotment in FS Under ARRA. This column contains the States' final FY 2010 DSH allotments as determined under ARRA.
Column G	FY 2010 FMAP. This column contains the States' FY 2010 FMAPs.
Column H	FY 2010 DSH Allotments in TC. Col. F/G. This column contains the FY 2010 total computable DSH Allotment (determined as the amount in Column F divided by the amount in Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2010 total computable DSH allotment (calculated as the amount in Column E multiplied by the amount in Column H).
Column J	FY 2010 TC IMD DSH Limit. Lesser of Col. C or I. This column contains the FY 2010 TC IMD DSH Limit equal to the lesser of the amount in Column C or Column I.
Column K	FY 2010 IMD DSH Limit in FS U/ARRA. Col. G × J. This column contains the FY 2010 Federal share IMD DSH limit determined by converting the total computable FY 2010 IMD DSH Limit from Column J into a Federal share amount by multiplying it by the FY 2010 FMAP in Column G.

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									CHART 4 - FINAL IMD DSH LIMIT FOR FY:	2010
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2010 ALLOTMENT IN FS UNDER ARRA	FY 2010 FMAP	FY 2010 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2010 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2010 IMD LIMIT IN FS U/ARRA Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$317,692,797	68.01%	$467,126,595	$4,981,436	$4,451,770	**$3,027,649**
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$104,606,165	65.75%	$159,096,829	$37,014,701	$28,474,900	**$18,722,247**
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,132,587,735	50.00%	$2,265,175,470	$1,608,274	$1,555,919	**$777,960**
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$95,566,125	50.00%	$191,132,250	$651,484	$594,776	**$297,388**
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$206,629,461	50.00%	$413,258,922	$106,690,543	$105,573,725	**$52,786,863**
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$63,280,272	70.00%	$90,400,389	$12,841,072	$6,545,136	**$4,581,595**
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$206,629,461	54.98%	$375,826,593	$124,022,776	$124,022,776	**$68,187,722**
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$277,658,339	65.10%	$426,510,505	$0	$0	**$0**
HAWAII	$0	$0	$0	0.00%	$10,000,000	54.24%	$18,436,578	$0	$0	**$0**
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$222,126,671	50.17%	$442,747,999	$97,674,816	$89,408,276	**$44,856,132**
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$220,835,237	65.93%	$334,954,098	$110,534,852	$110,534,852	**$72,875,628**
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$42,617,327	60.38%	$70,581,860	$23,292,014	$23,292,014	**$14,063,718**
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$149,806,360	70.96%	$211,113,811	$40,279,394	$37,443,073	**$26,569,605**
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$769,015,475	67.61%	$1,137,428,598	$124,797,843	$124,797,843	**$84,375,822**
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$108,480,467	64.99%	$166,918,706	$55,083,173	$55,083,173	**$35,798,554**
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$78,777,483	50.00%	$157,554,966	$51,993,139	$51,993,139	**$25,996,569**
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$315,109,928	50.00%	$630,219,856	$115,721,504	$105,635,054	**$52,817,527**
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$273,784,036	63.19%	$433,271,144	$142,979,478	$142,979,478	**$90,348,732**
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$157,554,964	75.67%	$208,213,247	$0	$0	**$0**
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$489,453,536	64.51%	$758,725,060	$215,631,054	$207,234,618	**$133,687,052**
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$47,783,063	50.16%	$95,261,290	$0	$0	**$0**
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$165,405,357	50.00%	$330,810,714	$109,167,536	$94,753,948	**$47,376,974**
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$665,088,579	50.00%	$1,330,177,158	$434,476,169	$357,370,461	**$178,685,231**
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,659,492,862	50.00%	$3,318,985,724	$664,045,340	$605,000,000	**$302,500,000**

									CHART 4 - FINAL IMD DSH LIMIT FOR FY:	2010
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2010 ALLOTMENT IN FS UNDER ARRA	FY 2010 FMAP	FY 2010 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2010 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2010 IMD LIMIT IN FS U/ARRA Col G x J
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$304,778,456	65.13%	$467,954,024	$154,424,828	$154,424,828	**$100,576,890**
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$419,716,094	63.42%	$661,803,996	$98,279,785	$93,432,758	**$59,255,055**
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$579,853,926	54.81%	$1,057,934,548	$349,118,401	$349,118,401	**$191,351,796**
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$67,154,574	52.63%	$127,597,519	$2,758,835	$2,397,833	**$1,261,980**
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$338,355,743	70.32%	$481,165,732	$79,042,864	$72,076,341	**$50,684,083**
TENNESSEE	$0	$0	$0	0.00%	$305,451,928	65.57%	$465,840,976	$0	$0	**$0**
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$987,947,112	58.73%	$1,682,184,764	$325,216,443	$292,513,592	**$171,793,233**
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$23,245,815	58.73%	$39,580,819	$12,359,469	$9,071,297	**$5,327,573**
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$90,511,529	50.00%	$181,023,058	$10,260,864	$7,770,268	**$3,885,134**
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$191,132,252	50.12%	$381,349,266	$125,845,258	$125,845,258	**$63,073,643**
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$69,737,443	74.04%	$94,188,875	$20,721,686	$18,887,045	**$13,983,968**
TOTAL	**$13,402,460,846**	**$4,118,758,904**	**$17,521,219,750**		**$11,157,866,572**		**$19,674,551,938**	**$3,651,515,030**	**$3,402,282,551**	**$1,919,526,323**
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$21,044,894	51.43%	$40,919,491	$13,503,432	$13,503,432	**$6,944,815**
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$44,567,684	72.78%	$61,236,169	$15,476,223	$819,351	**$596,324**
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,353,286	50.21%	$18,628,333	$6,147,350	$6,147,350	**$3,086,584**
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,982,360	69.40%	$24,470,259	$0	$0	**$0**
IOWA	$12,011,250	$0	$12,011,250	0.00%	$40,686,518	63.51%	$64,063,168	$0	$0	**$0**
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$77,164,611	50.00%	$154,329,222	$27,505,708	$5,257,214	**$2,628,607**
MONTANA	$237,048	$0	$237,048	0.00%	$11,727,024	67.42%	$17,393,984	$0	$0	**$0**
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$29,236,232	60.56%	$48,276,473	$10,585,994	$1,811,337	**$1,096,946**
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$21,044,894	71.35%	$29,495,296	$1,114,190	$254,786	**$181,790**

									CHART 4 - FINAL IMD DSH LIMIT FOR FY:	2010
A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2010 ALLOTMENT IN FS UNDER ARRA	FY 2010 FMAP	FY 2010 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2010 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2010 IMD LIMIT IN FS U/ARRA Col G x J
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$9,868,604	63.01%	$15,661,965	$5,168,448	$988,478	**$622,840**
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$37,413,143	64.43%	$58,067,892	$8,159,912	$3,273,248	**$2,108,954**
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$46,766,430	62.74%	$74,540,054	$24,598,218	$19,975,092	**$12,532,373**
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,410,747	62.72%	$18,193,155	$6,003,741	$751,299	**$471,215**
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$20,268,267	71.68%	$28,276,042	$5,800,729	$934,586	**$669,911**
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$97,666,330	60.21%	$162,209,483	$53,529,130	$4,492,011	**$2,704,640**
WYOMING	$0	$0	$0	0.00%	$233,831	50.00%	$467,662	$0	$0	**$0**
TOTAL LOW DSH STATES	**$98,662,480**	**$63,238,167**	**$161,900,647**		**$495,434,855**		**$816,228,650**	**$177,593,076**	**$58,208,184**	**$33,644,999**
TOTAL	**$13,501,123,326**	**$4,181,997,071**	**$17,683,120,397**		**$11,157,866,572**		**$20,490,780,588**	**$3,829,108,106**	**$3,460,490,735**	**$1,953,171,322**

Key to Chart 5. Preliminary IMD DSH Limit for FY 2011

KEY TO CHART 5—FINAL IMD DSH LIMIT FOR FY: 2011

[Key to the Chart of the FY 2011 IMD Limitations.—The final FY 2011 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this chart and the final FY 2011 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. Thls column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percent Col. C/D. This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) Of the Act, for FYs after FY 2002, the applicable Percentage can be no greater than 33 percent.
Column F	FY 2011 Federal Share DSH Allotment. This column contains the States' final FY 2011 DSH allotments.
Column G	FY 2011 FMAP. This columns contains the States' FY 2010 FMAPs.
Column H	FY 2011 DSH Allotments in Total Computable Col. F/G. This column contains States' FY 2011 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2010 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H)
Column J	FY 2011 TC IMD DSH Limit. Lesser of Col. C or I. This column contains the FY 2011 TC IMD DSH Limit equal to the lesser of the amount in Column C or Column I.
Column K	FY 2011 IMD DSH Limit in Federal Share, Col. G × J. This column contains the FY 2011 Federal share IMD DSH limit determined by converting the total computable FY 2011 IMD DSH Limit from Column J into a Federal share amount by multiplying it by the FY 2011 FMAP in Column G.

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CHART 5 - FINAL IMD DSH LIMIT FOR FY: 2011

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2011 ALLOTMENT IN FS	FY 2011 FMAP	FY 2011 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2011 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2011 IMD LIMIT IN FS Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$307,525,116	68.54%	$448,679,772	$4,784,719	$4,451,770	**$3,051,243**
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$101,258,270	65.85%	$153,771,101	$35,775,643	$28,474,900	**$18,750,722**
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,096,339,537	50.00%	$2,192,679,074	$1,556,802	$1,555,919	**$777,960**
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$92,507,555	50.00%	$185,015,110	$630,634	$594,776	**$297,388**
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$200,016,335	50.00%	$400,032,670	$103,275,938	$103,275,938	**$51,637,969**
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$61,255,002	70.00%	$87,507,146	$12,430,097	$6,545,136	**$4,581,595**
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$200,016,335	55.45%	$360,714,761	$119,035,871	$119,035,871	**$66,005,391**
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$268,771,950	65.33%	$411,406,628	$0	$0	**$0**
HAWAII	$0	$0	$0	0.00%	$10,000,000	51.79%	$19,308,747	$0	$0	**$0**
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$215,017,560	50.20%	$428,321,833	$94,492,254	$89,408,276	**$44,882,955**
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$213,767,459	66.52%	$321,358,176	$106,048,198	$106,048,198	**$70,543,261**
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$41,253,369	59.05%	$69,861,760	$23,054,381	$23,054,381	**$13,613,612**
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$145,011,843	71.49%	$202,842,136	$38,701,203	$37,443,073	**$26,768,053**
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	64.72%	$1,130,964,153	$124,088,569	$124,088,569	**$80,310,122**
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$105,008,576	63.80%	$164,590,245	$54,314,781	$54,314,781	**$34,652,830**
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$76,256,228	50.00%	$152,512,456	$50,329,110	$50,329,110	**$25,164,555**
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$305,024,911	50.00%	$610,049,822	$112,017,866	$105,635,054	**$52,817,527**
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$265,021,644	65.79%	$402,829,676	$132,933,793	$132,933,793	**$87,457,143**
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$152,512,455	74.73%	$204,084,645	$0	$0	**$0**
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$473,788,694	63.29%	$748,599,611	$212,753,383	$207,234,618	**$131,158,790**
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$46,253,777	51.61%	$89,621,734	$0	$0	**$0**
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$160,111,598	50.00%	$320,223,196	$105,673,655	$94,753,948	**$47,376,974**
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$643,802,579	50.00%	$1,287,605,158	$420,570,863	$357,370,461	**$178,685,231**
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,606,381,192	50.00%	$3,212,762,384	$642,792,729	$605,000,000	**$302,500,000**
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$295,024,095	64.71%	$455,917,316	$150,452,714	$150,452,714	**$97,357,951**

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2011 ALLOTMENT IN FS	FY 2011 FMAP	FY 2011 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2011 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2011 IMD LIMIT IN FS Col G x J
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$406,283,181	63.69%	$637,907,334	$94,731,062	$93,432,758	**$59,507,324**
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$561,295,840	55.64%	$1,008,799,137	$332,903,715	$332,903,715	**$185,227,627**
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$65,005,309	52.97%	$122,720,991	$2,653,398	$2,397,833	**$1,270,132**
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$327,526,749	70.04%	$467,628,140	$76,818,993	$72,076,341	**$50,482,269**
TENNESSEE	$0	$0	$0	0.00%	$305,451,928	65.85%	$463,860,179	$0	$0	**$0**
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$956,328,103	60.56%	$1,579,141,518	$305,295,113	$292,513,592	**$177,146,231**
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$22,501,838	58.71%	$38,327,096	$11,967,983	$9,071,297	**$5,325,758**
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$87,614,730	50.00%	$175,229,460	$9,932,467	$7,770,268	**$3,885,134**
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$185,015,110	50.00%	$370,030,220	$122,109,973	$122,109,973	**$61,054,986**
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$67,505,513	73.24%	$92,170,280	$20,277,592	$18,887,045	**$13,832,872**
TOTAL	**$13,402,460,846**	**$4,118,758,904**	**$17,521,219,750**		**$10,798,414,381**		**$19,017,073,664**	**$3,522,403,498**	**$3,353,164,109**	**$1,896,123,605**
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$20,371,357	50.00%	$40,742,714	$13,445,096	$13,445,096	**$6,722,548**
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$43,141,306	71.37%	$60,447,395	$15,276,877	$819,351	**$584,771**
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,053,936	53.15%	$17,034,687	$5,621,447	$5,621,447	**$2,987,799**
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,438,844	68.85%	$23,876,317	$0	$0	**$0**
IOWA	$12,011,250	$0	$12,011,250	0.00%	$39,384,356	62.63%	$62,884,171	$0	$0	**$0**
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$74,694,976	50.00%	$149,389,952	$26,625,394	$5,257,214	**$2,628,607**
MONTANA	$237,048	$0	$237,048	0.00%	$11,351,703	66.81%	$16,991,024	$0	$0	**$0**
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$28,300,533	58.44%	$48,426,648	$10,618,925	$1,811,337	**$1,058,545**
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$20,371,357	69.78%	$29,193,690	$1,102,797	$254,786	**$177,790**
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$9,552,761	60.35%	$15,828,933	$5,223,548	$988,478	**$596,546**
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$36,215,744	64.94%	$55,768,007	$7,836,724	$3,273,248	**$2,125,647**
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$45,269,681	62.85%	$72,028,132	$23,769,284	$19,975,092	**$12,554,345**
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,045,549	61.25%	$18,033,549	$5,951,071	$751,299	**$460,171**
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$19,619,586	71.13%	$27,582,716	$5,658,496	$934,586	**$664,771**

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2011 ALLOTMENT IN FS	FY 2011 FMAP	FY 2011 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2011 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2011 IMD LIMIT IN FS Col G x J
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$94,540,543	60.16%	$157,148,509	$51,859,008	$4,492,011	$2,702,394
WYOMING	$0	$0	$0	0.00%	$226,348	50.00%	$452,696	$0	$0	$0
TOTAL LOW DSH STATES	$98,662,480	$63,238,167	$161,900,647		$479,578,580		$795,829,140	$172,988,665	$57,623,944	$33,263,934
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$11,277,992,961		$19,812,902,804	$3,695,392,162	$3,410,788,053	$1,929,387,539

Key to Chart 6. Preliminary IMD DSH Limit for FY 2012

KEY TO CHART 6—PRELIMINARY IMD DSH LIMIT FOR FY: 2012

[Key to the Chart of the FY 2012 IMD Limitations.—The preliminary FY 2012 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this chart and the preliminary FY 2012 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percent Col. C/D. This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) Of the Act, for FYs after FY 2002, the applicable Percentage can be no greater than 33 percent.
Column F	FY 2012 Federal Share DSH Allotment. This column contains the States' preliminary FY 2012 DSH allotments.
Column G	FY 2012 FMAP. This columns contains the States' FY 2010 FMAPs.
Column H	FY 2012 DSH Allotments in Total Computable Col. F/G. This column contains States' FY 2012 total computable DSH allotment (determined as Column F/Column G).
Column I	Col E * Col H in TC. This column contains the applicable percent of FY 2012 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	FY 2012 TC IMD DSH Limit. Lesser of Col. C or I. This column contains the FY 2012 TC IMD DSH Limit equal to the lesser of the amount in Column C or Column I.
Column K	FY 2012 IMD DSH Limit in Federal Share, Col. G × J. This column contains the FY 2012 Federal share IMD DSH limit determined by converting the total computable FY 2012 IMD DSH Limit from Column J into a Federal share amount by multiplying it by the FY 2012 FMAP in Column G.

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CHART 6 - PRELIMINARY IMD DSH LIMIT FOR FY: 2012

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2012 ALLOTMENT IN FS	FY 2012 FMAP	FY 2012 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2012 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2012 IMD LIMIT IN FS Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$314,905,719	68.62%	$458,912,444	$4,893,840	$4,451,770	**$3,054,805**
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$103,688,468	67.30%	$154,069,046	$35,844,961	$28,474,900	**$19,163,608**
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,122,651,686	50.00%	$2,245,303,372	$1,594,165	$1,555,919	**$777,960**
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$94,727,736	50.00%	$189,455,472	$645,769	$594,776	**$297,388**
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$204,816,727	50.00%	$409,633,454	$105,754,560	$105,573,725	**$52,786,863**
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$62,725,122	70.00%	$89,607,317	$12,728,419	$6,545,136	**$4,581,595**
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$204,816,727	56.04%	$365,483,096	$120,609,422	$120,609,422	**$67,589,520**
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$275,222,477	66.16%	$415,995,280	$0	$0	**$0**
HAWAII	$0	$0	$0	0.00%	$10,000,000	50.48%	$19,809,826	$0	$0	**$0**
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$220,177,981	50.00%	$440,355,962	$97,147,108	$89,408,276	**$44,704,138**
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$218,897,878	66.96%	$326,908,420	$107,879,779	$107,879,779	**$72,236,300**
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$42,243,450	56.91%	$74,228,519	$24,495,411	$24,495,411	**$13,940,339**
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$148,492,127	71.18%	$208,614,958	$39,802,627	$37,443,073	**$26,651,979**
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	69.78%	$1,048,953,855	$115,090,459	$115,090,459	**$80,310,122**
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$107,528,782	63.27%	$169,952,240	$56,084,239	$56,084,239	**$35,484,498**
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$78,086,377	50.00%	$156,172,754	$51,537,009	$51,537,009	**$25,768,504**
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$312,345,509	50.00%	$624,691,018	$114,706,294	$105,635,054	**$52,817,527**
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$271,382,163	66.14%	$410,314,731	$135,403,861	$135,403,861	**$89,556,114**
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$156,172,754	74.18%	$210,532,157	$0	$0	**$0**
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$485,159,623	63.45%	$764,632,976	$217,310,094	$207,234,618	**$131,490,365**
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$47,363,868	56.20%	$84,277,345	$0	$0	**$0**
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$163,954,276	50.00%	$327,908,552	$108,209,822	$94,753,948	**$47,376,974**
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$659,253,841	50.00%	$1,318,507,682	$430,664,564	$357,370,461	**$178,685,231**
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,644,934,341	50.00%	$3,289,868,682	$658,219,754	$605,000,000	**$302,500,000**
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$302,104,673	65.28%	$462,782,894	$152,718,355	$152,718,355	**$99,694,542**

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2012 ALLOTMENT IN FS	FY 2012 FMAP	FY 2012 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2012 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2012 IMD LIMIT IN FS Col G x J
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$416,033,977	64.15%	$648,533,090	$96,309,017	$93,432,758	$59,937,114
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$574,766,940	55.07%	$1,043,702,451	$344,421,809	$344,421,809	$189,673,090
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$66,565,436	52.12%	$127,715,725	$2,761,391	$2,397,833	$1,249,751
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$335,387,391	70.24%	$477,487,743	$78,438,667	$72,076,341	$50,626,422
TENNESSEE	$0	$0	$0	0.00%	$123,562,982	66.36%	$186,200,998	$0	$0	$0
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$979,279,977	58.22%	$1,682,033,626	$325,187,224	$292,513,592	$170,301,413
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$23,041,882	57.58%	$40,017,162	$12,495,721	$9,071,297	$5,223,253
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$89,717,484	50.00%	$179,434,968	$10,170,847	$7,770,268	$3,885,134
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$189,455,473	50.00%	$378,910,946	$125,040,612	$125,040,612	$62,520,306
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$69,125,645	72.62%	$95,188,164	$20,941,531	$18,887,045	$13,715,772
TOTAL	$13,402,460,846	$4,118,758,904	$17,521,219,750		$10,850,549,492		$19,126,196,924	$3,607,107,331	$3,373,471,745	$1,906,600,627
LOW DSH STATES										
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$20,860,270	50.00%	$41,720,540	$13,767,778	$13,767,778	$6,883,889
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$44,176,697	70.71%	$62,475,883	$15,789,537	$819,351	$579,363
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$9,271,230	54.17%	$17,115,064	$5,647,971	$5,647,971	$3,059,506
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$16,833,376	70.23%	$23,968,925	$0	$0	$0
IOWA	$12,011,250	$0	$12,011,250	0.00%	$40,329,581	60.71%	$66,429,881	$0	$0	$0
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$76,487,655	50.00%	$152,975,310	$27,264,403	$5,257,214	$2,628,607
MONTANA	$237,048	$0	$237,048	0.00%	$11,624,144	66.11%	$17,583,034	$0	$0	$0
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$28,979,746	56.64%	$51,164,806	$11,219,344	$1,811,337	$1,025,941
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$20,860,270	69.36%	$30,075,360	$1,136,102	$254,786	$176,720
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$9,782,027	55.40%	$17,657,088	$5,826,839	$988,478	$547,617
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$37,084,922	63.88%	$58,054,042	$8,157,966	$3,273,248	$2,090,951
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$46,356,153	62.91%	$73,686,462	$24,316,532	$19,975,092	$12,566,330
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$11,310,642	59.13%	$19,128,432	$6,312,383	$751,299	$444,243
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$20,090,456	70.99%	$28,300,403	$5,805,727	$934,586	$663,463

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2012 ALLOTMENT IN FS	FY 2012 FMAP	FY 2012 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2012 TC IMD LIMIT (LESSER OF Col I or Col C)	FY 2012 IMD LIMIT IN FS Col G x J
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$96,809,516	60.53%	$159,936,422	$52,779,019	$4,492,011	$2,719,014
WYOMING	$0	$0	$0	0.00%	$231,780	50.00%	$463,560	$0	$0	$0
TOTAL LOW DSH STATES	$98,662,480	$63,238,167	$161,900,647		$491,088,465		$820,735,213	$178,023,601	$57,973,151	$33,385,644
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$11,341,637,957		$19,946,932,136	$3,785,130,932	$3,431,444,896	$1,939,986,271

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2385–N]

RIN 0938–AR47

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals (QIs) for FY 2012

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

ACTION: Notice.

SUMMARY: This notice sets forth the States' final allotments available to pay the Medicare Part B premiums for Qualifying Individuals (QIs) for the Federal fiscal year (FY) 2011 and the preliminary QI allotments for FY 2012. The amounts of these QI allotments were determined in accordance with the methodology set forth in regulations and reflect funding for the QI program made available under recent legislation as described in this notice.

DATES: The final QI allotments for payment of Medicare Part B premiums for FY 2011 are effective October 1, 2010. The preliminary QI allotments for FY 2012 are effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

A. QI Allotments for FY 2011 and Thereafter

Section 5005 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, enacted on February 17, 2009) (Recovery Act) extended the authority and funding for the QI program by providing $150 million in additional funds for the first quarter of FY 2011 (that is, through December 31, 2010). Section 3 of the Emergency Aid to American Survivors of the Haiti Earthquake Act (Pub. L. 111–127, enacted on January 27, 2010) (Haiti Earthquake Act) provided an additional $15 million for States' FY 2011 QI allotments; that brought the total funds available for the QI program for FY 2011 through December 31, 2010 to $165 million. Section 110 of the Medicare and Medicaid Extenders Act of 2010 (Pub. L. 111–309, enacted on December 15, 2010) (MMEA) extended authority and funding for the QI program for FY 2011 by providing an additional $720 million for the QI program for the last 3 quarters of FY 2011 in addition to the previously available $165 million; which brought the total funding available for the QI program for FY 2011 to $885 million.

B. QI Allotments for FY 2012 and Thereafter

Section 110 of the MMEA also extended the authority and funding for the QI program for the first quarter of FY 2012 (that is, through December 31, 2011) by providing $280 million available for the first quarter of FY 2012. Section 310 of the Temporary Payroll Tax Cut Continuation Act of 2011 (Pub. L. 112–78, enacted on December 23, 2011) (TPTCA) provided temporary continued authority and an additional $150 million in funding for the QI program for the period January 1, 2012 through February 29, 2012. With the enactment of TPTCA, the QI program was authorized and funded at a total amount nationally of $430 million ($280 million plus $150 million) for FY 2012 through February 29, 2012. Most recently, section 3101 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, enacted on February 22, 2012) extended the authority and funding for the QI program for FY 2012 by increasing the amount of funding previously made available under TPTCA for FY 2012 from $150 million to $450 million, and extending the period in FY 2012 this funding is available to September 30, 2012 (that is, to the end of FY 2012). Therefore the total funding available for the QI program for FY 2012 is $730 million ($280 million plus $450 million).

Finally, section 3101 of Middle Class Tax Relief and Job Creation Act also extended the authority and funding for the QI program by providing $280 million to be available for the period October 1, 2012 through December 31, 2012, the first quarter of FY 2013.

C. Methodology for Calculating the Fiscal Year QI Allotments

The amounts of the final FY 2011 and preliminary FY 2012 QI allotments, contained in this notice, were determined in accordance with the methodology set forth in existing regulations at 42 CFR 433.10(c)(5) and reflect funding for the QI program made available under the legislation discussed above.

II. Charts

The final QI allotments for FY 2011 and the preliminary QI allotments for FY 2011 are shown by State in Chart 1 and Chart 2 below, respectively:

Chart 1—Final Qualifying Individuals Allotments for October 1, 2010 through September 30, 2011.

Chart 2—Preliminary Qualifying Individuals Allotments for October 1, 2011 through September 30, 2012.

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CHART 2 - PRELIMINARY QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2011 THROUGH SEPTEMBER 30, 2012											
STATE	Initial QI Allotments for FY 2012			FY 2012 Estimated QI Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need	Pct of Tot. Non-Need	Reduction Adj. For Non-Need States	Increase Adj. For Need States	Preliminary FY 2012 QI Allotment /2
	Number of Individuals /3	Percentage of Total Col B/Tot. Col B	Initial QI Allotment Col C x		If E>D, E-D	F/(Tot. of F)	States If D >= E, D - E	States H/(Tot. of H)	Col. 1 x	Col. G x	
	(000s)		$730,000,000						$85,380,846	$85,380,846	
A	B	C	D	E	F	G	H	1	J	K	L
Alabama	43	3.22%	$23,513,109	$22,391,905	NA	NA	$1,121,204	0.6386%	$545,274	NA	$22,967,835
Alaska	2	0.15%	$1,093,633	$292,520	NA	NA	$801,113	0.4563%	$389,605	NA	$704,028
Arizona	14	1.05%	$7,655,431	$16,913,743	$9,258,312	10.8435%	Need	Need	Need	$9,258,312	$16,913,743
Arkansas	21	1.57%	$11,483,146	$12,923,935	$1,440,789	1.6875%	Need	Need	Need	$1,440,789	$12,923,935
California	89	6.67%	$48,666,667	$27,372,524	NA	NA	$21,294,143	12.1291%	$10,355,963	NA	$38,310,703
Colorado	16	1.20%	$8,749,064	$5,328,003	NA	NA	$3,421,061	1.9486%	$1,663,762	NA	$7,085,302
Connecticut	15	1.12%	$8,202,247	$1,964,854	NA	NA	$6,237,394	3.5528%	$3,033,426	NA	$5,168,821
Delaware	4	0.30%	$2,187,266	$3,045,126	$857,860	1.0047%	Need	Need	Need	$857,860	$3,045,126
District of Columbia	2	0.15%	$1,093,633	$0	NA	NA	$1,093,633	0.6229%	$531,866	NA	$561,767
Florida	83	6.22%	$45,385,768	$67,607,679	$22,221,911	26.0268%	Need	Need	Need	$22,221,911	$67,607,679
Georgia	35	2.62%	$19,138,577	$33,575,562	$14,436,985	16.9089%	Need	Need	Need	$14,436,985	$33,575,562
Hawaii	5	0.37%	$2,734,082	$1,266,245	NA	NA	$1,467,838	0.8361%	$713,852	NA	$2,020,230
Idaho	6	0.45%	$3,280,899	$2,341,408	NA	NA	$939,491	0.5351%	$456,902	NA	$2,823,997
Illinois	64	4.79%	$34,996,255	$29,128,891	NA	NA	$5,867,364	3.3420%	$2,853,470	NA	$32,142,785
Indiana	39	2.92%	$21,325,843	$6,989,431	NA	NA	$14,336,411	8.1660%	$6,972,215	NA	$14,353,628
Iowa	16	1.20%	$8,749,064	$4,434,254	NA	NA	$4,314,810	2.4577%	$2,098,418	NA	$6,650,646
Kansas	19	1.42%	$10,389,513	$4,720,678	NA	NA	$5,668,835	3.2290%	$2,756,920	NA	$7,632,593
Kentucky	32	2.40%	$17,498,127	$15,140,999	NA	NA	$2,357,129	1.3426%	$1,146,340	NA	$16,351,787
Louisiana	28	2.10%	$15,310,861	$20,301,932	$4,991,071	5.8457%	Need	Need	Need	$4,991,071	$20,301,932
Maine	6	0.45%	$3,280,899	$5,502,494	$2,221,595	2.6020%	Need	Need	Need	$2,221,595	$5,502,494

CHART 2 - PRELIMINARY QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2011 THROUGH SEPTEMBER 30, 2012											
STATE	Initial Q1 Allotments for FY 2012			FY 2012 Estimated Q1 Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need States	Pct of Tot. Non-Need States	Reduction Adj. For Non-Need States	Increase Adj. For Need States	Preliminary FY 2012 Q1 Allotment /2
	Number of Individuals /3 (000s)	Percentage of Total Col B/Tot. Col B	Initial Q1 Allotment Col C x $730,000,000		If E>D, E-D	F/(Tot. of F)	If D >= E, D - E	H/(Tot. of H)	Col. I x $85,380,846	Col. G x $85,380,846	
A	B	C	D	E	F	G	H	I	J	K	L
Maryland	19	1.42%	$10,389,513	$7,940,024	NA	NA	$2,449,489	1.3952%	$1,191,258	NA	$9,198,255
Massachusetts	34	2.55%	$18,591,760	$9,865,515	NA	NA	$8,726,245	4.9705%	$4,243,828	NA	$14,347,933
Michigan	39	2.92%	$21,325,843	$16,527,241	NA	NA	$4,798,602	2.7333%	$2,333,700	NA	$18,992,143
Minnesota	21	1.57%	$11,483,146	$6,331,442	NA	NA	$5,151,704	2.9344%	$2,505,424	NA	$8,977,722
Mississippi	19	1.42%	$10,389,513	$14,073,559	$3,684,045	4.3148%	Need	Need	Need	$3,684,045	$14,073,559
Missouri	35	2.62%	$19,138,577	$4,610,033	NA	NA	$14,528,544	8.2755%	$7,065,655	NA	$12,072,922
Montana	7	0.52%	$3,827,715	$1,634,468	NA	NA	$2,193,247	1.2493%	$1,066,640	NA	$2,761,075
Nebraska	7	0.52%	$3,827,715	$2,290,755	NA	NA	$1,536,961	0.8755%	$747,469	NA	$3,080,247
Nevada	9	0.67%	$4,921,348	$4,571,315	NA	NA	$350,034	0.1994%	$170,232	NA	$4,751,117
New Hampshire	5	0.37%	$2,734,082	$2,423,106	NA	NA	$310,976	0.1771%	$151,237	NA	$2,582,846
New Jersey	29	2.17%	$15,857,678	$10,951,168	NA	NA	$4,906,510	2.7947%	$2,386,179	NA	$13,471,499
New Mexico	10	0.75%	$5,468,165	$4,465,903	NA	NA	$1,002,262	0.5709%	$487,429	NA	$4,980,736
New York	78	5.84%	$42,651,685	$48,773,400	$6,121,715	7.1699%	Need	Need	Need	$6,121,715	$48,773,400
North Carolina	47	3.52%	$25,700,375	$27,251,247	$1,550,872	1.8164%	Need	Need	Need	$1,550,872	$27,251,247
North Dakota	3	0.22%	$1,640,449	$657,258	NA	NA	$983,191	0.5600%	$478,154	NA	$1,162,295
Ohio	58	4.34%	$31,715,356	$24,059,429	NA	NA	$7,655,927	4.3608%	$3,723,300	NA	$27,992,055
Oklahoma	17	1.27%	$9,295,880	$10,688,913	$1,393,033	1.6316%	Need	Need	Need	$1,393,033	$10,688,913
Oregon	17	1.27%	$9,295,880	$15,585,720	$6,289,840	7.3668%	Need	Need	Need	$6,289,840	$15,585,720
Pennsylvania	66	4.94%	$36,089,888	$31,174,879	NA	NA	$4,915,008	2.7996%	$2,390,312	NA	$33,699,576
Rhode Island	5	0.37%	$2,734,082	$2,190,922	NA	NA	$543,161	0.3094%	$264,155	NA	$2,469,928
South	26	1.95%	$14,217,228	$12,453,000	NA	NA	$1,764,228	1.0049%	$857,996	NA	$13,359,233

CHART 2 - PRELIMINARY QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2011 THROUGH SEPTEMBER 30, 2012

STATE	Initial QI Allotments for FY 2012			FY 2012 Estimated QI Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need States	Pct of Tot. Non-Need States	Reduction Adj. For Non-Need States	Increase Adj. For Need States	Preliminary FY 2012 QI Allotment /2
	Number of Individuals /3	Percentage of Total	Initial QI Allotment Col C x		If E>D, E-D	F/(Tot. of F)	If D >= E, D - E	H/(Tot. of H)	Col. 1 x	Col. G x	
	(000s)	Col B/Tot. Col B	$730,000,000						$85,380,846	$85,380,846	
A	B	C	D	E	F	G	H	I	J	K	L
Carolina											
South Dakota	4	0.30%	$2,187,266	$1,945,379	NA	NA	$241,887	0.1378%	$117,637	NA	$2,069,629
Tennessee	32	2.40%	$17,498,127	$25,846,389	$8,348,262	9.7777%	Need	Need	Need	$8,348,262	$25,846,389
Texas	105	7.87%	$57,415,730	$32,047,796	NA	NA	$25,367,935	14.4496%	$12,337,166	NA	$45,078,563
Utah	5	0.37%	$2,734,082	$2,410,794	NA	NA	$323,288	0.1841%	$157,224	NA	$2,576,858
Vermont	2	0.15%	$1,093,633	$3,658,188	$2,564,555	3.0037%	Need	Need	Need	$2,564,555	$3,658,188
Virginia	25	1.87%	$13,670,412	$11,425,182	NA	NA	$2,245,230	1.2789%	$1,091,921	NA	$12,578,491
Washington	26	1.95%	$14,217,228	$9,948,702	NA	NA	$4,268,527	2.4314%	$2,075,909	NA	$12,141,319
West Virginia	16	1.20%	$8,749,064	$6,525,062	NA	NA	$2,224,001	1.2668%	$1,081,597	NA	$7,667,467
Wisconsin	27	2.02%	$14,764,045	$5,362,178	NA	NA	$9,401,867	5.3553%	$4,572,402	NA	$10,191,643
Wyoming	3	0.22%	$1,640,449	$887,851	NA	NA	$752,599	0.4287%	$366,011	NA	$1,274,439
Total	1,335	100.00%	$730,000,000	$639,818,999	$85,380,846	100.0000%	$175,561,847	100.0000%	$85,380,846	$85,380,846	$730,000,000

Footnotes:

/1 FY 2012 Estimates from January 2012 CMS Survey of States; Estimates Are For Months October 2011 Through September 2012

/2 For Need States, Preliminary FY 2012 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K

For Non-Need States, Preliminary FY 2012 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J

/3 Three-year average (2008-2010) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level

Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the 2011 Current Population Survey (CPS)

The following describes the information contained in the columns of Chart 1 and Chart 2:

Column A—*State.* Column A shows the name of each State. Columns B through D show the determination of an Initial QI Allotment for FY 2011 (Chart 1) or FY 2012 (Chart 2) for each State, based only on the indicated Census Bureau data.

Column B—*Number of Individuals.* Column B contains the estimated average number of Medicare beneficiaries for each State that are not covered by Medicaid whose family income is at least 120 but less than 135 percent of the federal poverty level. With respect to the *final FY 2011 QI allotment (Chart 1),* Column B contains the number of such individuals for the years 2007 through 2009, as obtained from the Census Bureau's Annual Social and Economic Supplement to the 2010 Current Population Survey. With respect to the *preliminary FY 2012 QI allotment (Chart 2),* Column B contains the number of such individuals for the years 2008 through 2010, as obtained from the Census Bureau's Annual Social and Economic Supplement to the 2011 Current Population Survey.

Column C—*Percentage of Total.* Column C provides the percentage of the total number of individuals for each State, that is, the Number of Individuals for the State in Column B divided by the sum total of the Number of Individuals for all States in Column B.

Column D—*Initial QI Allotment.* Column D contains each State's Initial QI Allotment for FY 2011 (Chart 1) or FY 2012 (Chart 2), calculated as the State's Percentage of Total in Column C multiplied by the total amount available nationally for QI allotments for the fiscal year. The total amount available nationally for QI allotments each fiscal year is $885,000,000 for FY 2011 (Chart 1) and $730,000,000 for FY 2012 (Chart 2).

Columns E through L show the determination of the States' Final QI Allotments for FY 2011 (Chart 1) or Preliminary QI Allotments for FY 2012 (Chart 2).

Column E—*FY 2011 Estimated QI Expenditures.* Column E contains the States' estimates of their total QI expenditures for FY 2011 (Chart 1) or FY 2012 (Chart 2) based on information obtained from States in the summer of 2011. The projected QI expenditures for FY 2012 were updated in January 2012 to reflect the extended funding and authority for the QI program for FY 2012.

Column F—*Need (Difference).* Column F contains the additional amount of QI allotment needed for those States whose estimated expenditures in Column E exceeded their Initial QI allotments in Column D for FY 2011 (Chart 1) or for FY 2012 (Chart 2) for such States, Column F shows the amount in Column E minus the amount in Column D. For other "Non-Need" States, Column F shows "NA".

Column G—*Percent of Total Need States.* For States whose projected QI expenditures in Column E are greater than their initial QI allotment in Column D for FY 2011 (Chart 1) or FY 2012 (Chart 2), respectively, Column G shows the percentage of total need, determined as the amount for each Need State in Column F divided by the sum of the amounts for all States in Column F. For Non-Need States, the entry in Column G is "NA".

Column H—*Reduction Pool for Non-Need States.* Column H shows the amount of the pool of surplus QI allotments for FY 2011 (Chart 1) or FY 2012 (Chart 2), respectively, for those States that project QI expenditures for the fiscal year that are less than the Initial QI allotment for the fiscal year (referred to as non-need States). For States whose estimates of QI expenditures for FY 2011 or FY 2012, respectively, in Column E are equal to or less than their Initial FY 2011 or FY 2012 QI allotments in Column D for FY 2011 or FY 2012, Column H shows the amount in Column D minus the amount in Column E. For the States with a need, Column H shows "Need". The reduction pool of excess QI allotments is equal to the sum of the amounts in Column H.

Column I—*Percent of Total Non-Need States.* For States whose projected QI expenditures in Column E are less than their Initial QI allotment in Column D for FY 2011 (Chart 1) or FY 2012 (Chart 2), Column I shows the percentage of the total reduction pool in Column H, determined as the amount for each Non-Need State in Column H divided by the sum of the amounts for all States in Column H. For Need States, the entry in Column I is "Need".

Column J—*Reduction Adjustment for Non-Need States.* Column J shows the amount of adjustment needed to reduce the Initial QI allotments in Column D for FY 2011 (Chart 1) or FY 2012 (Chart 2) for Non-Need States in order to address the total need shown in Column F. The amount in Column J is determined as the percentage in column I for Non-Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Need States, the entry in Column J is "Need".

Column K—*Increase Adjustment for Need States.* Column K shows the amount of adjustment to increase the Initial QI Allotment in Column D for FY 2011 (Chart 1) or FY 2012 (Chart 2) for Need States in order to address the total need shown for the fiscal year in Column F. The amount in Column K is determined as the percentage in Column G for Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Non-Need States, the entry in Column K is "NA".

Column L—*Final FY 2011 QI Allotment (Chart 1) or Preliminary FY 2012 QI Allotment (Chart 2).* Column L contains the Final QI Allotment for each State for FY 2011 (Chart 1) or the Preliminary QI Allotment for FY 2012 (Chart 2). For States that need additional QI allotment amounts for the fiscal year based on Estimated QI Expenditures in Column E as compared to their Initial QI allotments in Column D for the fiscal year (States with a projected need amount are shown in Column F), Column L is equal to the Initial QI allotment in Column D for FY 2011 (Chart 1) or FY 2012 (Chart 2) plus the amount determined in Column K for Need States. For Non-Need States (States with a projected surplus in Column H), Column L is equal to the QI Allotment in Column D reduced by the Reduction Adjustment amount in Column J.

III. Waiver of Notice With Comment and 30-Day Delay in Effective Date

We ordinarily publish a notice with comment in the **Federal Register** and invite public comment. The notice with comment includes a reference to the legal authority under which the notice is proposed, and the terms and substance of the notice with comment, or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the notice issued. In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq).

We are publishing this notice without a comment period or delay in effective

date because of the need to notify individual States of the limitations on Federal funds for their Medicaid expenditures for payment of Medicare Part B premiums for qualifying individuals. Some States have experienced deficits in their current allotments that have caused them to consider denying benefits to eligible applicants, while other States project a surplus in their allotments. This notice adjusts the allocation of Federal funds, which will reduce the impact of States potentially denying coverage to eligible QIs when there is sufficient funding to cover all or some of these individuals. Because access to Medicare Part B coverage for QIs, who without this coverage would have difficulty paying for needed health care, is critically important, we believe that it is in the public interest to waive the usual notice and comment procedure which we undertake before making a notice final. Moreover, we are not making any changes to the process we use for allocating allotments. We are simply implementing a process already set forth in regulations. For these reasons, we also believe a notice and comment process would be unnecessary.

Therefore, for the reasons discussed above, we find that good cause exists to dispense with the normal requirement that a notice cannot become effective any earlier than 30 days after its publication. States that will have access to additional funds for QIs need to know that these funds are available as soon as possible. While we believe the surplus States that will have diminished amounts available for this FY will have sufficient funds for enrolling all potential QIs in their States, they also need to know as soon as possible that a certain amount of their unused allocation will no longer be available to them for this FY.

IV. Collection of Information Requirements

This notice does not impose any information collection or recordkeeping requirements. Consequently, it does not need Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This notice does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any one year. Individuals and States are not included in the definition of a small entity.

This notice codifies our procedures for implementing provisions of the Balanced Budget Act of 1997 (Pub. L. 105–33, enacted on August 5, 1997) to allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for low-income Medicare beneficiaries. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments. Because the data specified in the law were not initially available, we used comparable data from the U.S. Census Bureau on the number of possible qualifying individuals in the States. This notice also permits, in a specific circumstance, reallocation of funds to enable enrollment of all eligible individuals to the extent of the available funding.

We believe that the statutory provisions implemented in this notice will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for qualifying individuals and, with the reallocation of the State allotments, a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid. The changes in allotments will not result in fewer individuals receiving the QI benefit in any State.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. The analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted on March 22, 1995), also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $139 million. This notice will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 14, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 8, 2012.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–17952 Filed 7–20–12; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities; Agency Information Collection Activities; Proposed Collection; Comment Request; Financial Status Reporting Form for State Councils on Developmental Disabilities

AGENCY: Administration for Community Living, Administration on Intellectual and Developmental Disabilities, HHS.

ACTION: Notice.

SUMMARY: For the program of the State Councils on Developmental Disabilities, funds are awarded to State agencies contingent on fiscal requirements in subtitle B of the Developmental Disabilities Assistance and Bill of rights Act. The SF–425, ordinarily mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. Consequently, the proposed streamlined form will substitute for the SF–425 and will allow compliance monitoring and proactive compliance maintenance and technical assistance.

DATES: Submit written or electronic comments on the collection of information by August 23, 2012.

ADDRESSES: Submit electronic comments on the collection of information to: *Carla.Thomas@acf.hhs.gov.* Submit written comments on the collection of information to Carla Thomas, Administration on Intellectual and Developmental Disabilities, Administration on Community Living, Washington, DC 20447 or by fax at (202) 205–8037.

FOR FURTHER INFORMATION CONTACT: Jennifer Johnson at (202) 690–5982 or *Carla.Thomas@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 42 U.S.C. 1500 *et seq.* (the DD Act), ACL/AIDD has submitted the following proposed collection of information to OMB for review and clearance.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Status Reporting Form for State Councils on Developmental Disabilities Program	55	3	5.10	841.5

Estimated Total Annual Burden Hours: 841.5.

Dated: July 19, 2012.

Kathy Greenlee,

Administrator & Assistant Secretary for Aging.

[FR Doc. 2012–18019 Filed 7–23–12; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0268]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by August 23, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title "Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration—(OMB Control Number 0910–New)

I. Background

In the **Federal Register** of August 17, 2009 (74 FR 41438) (the August 17, 2009, notice), FDA published a notice of availability of the draft guidance document entitled "Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration" (the draft guidance). Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/FoodGuidances.* This guidance, when finalized, will provide industry with information on how to label beers that are subject to FDA's labeling laws and regulations. This draft guidance was issued in light of the ruling by the Alcohol and Tobacco Tax and Trade Bureau (TTB) (formerly The Bureau of Alcohol, Tobacco, and Firearms (ATF)) clarifying that certain beers do not meet the definition of a "malt beverage" under the Federal Alcohol Administration Act (the FAA Act). Because these beers are not subject to the labeling provisions of the FAA Act, they are subject to the labeling provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and the Fair Packaging and Labeling Act (FPLA). FDA, in the draft guidance, also reminds manufacturers that the labeling of wine beverages containing less than 7 percent alcohol by volume, such as wine coolers, diluted wine beverages, dealcoholized or partially dealcoholized wine and ciders, is also subject to FDA labeling requirements.

As reflected in the 1987 Memorandum of Understanding between FDA and TTB's predecessor Agency, the ATF (Ref. 1), TTB is responsible for the issuance and enforcement of regulations with respect

to the labeling of distilled spirits, wines, and malt beverages under the FAA Act.

The TTB has clarified that certain beers, which are not made from both malted barley and hops but are instead made from substitutes for malted barley (such as sorghum, rice, or wheat) or are made without hops, do not meet the definition of a malt beverage under the FAA Act. (See TTB Ruling 2008–3.) (Ref. 2). TTB stated in its ruling that such products (other than sake, which is classified as a wine under the FAA Act) are not subject to the labeling, advertising, and other provisions of the TTB regulations issued under the FAA Act. Therefore, these beers are subject to the labeling requirements under FDA's regulations. However, as explained in the TTB ruling, some TTB labeling requirements such as the Government Health Warning Statement under the Alcoholic Beverage Labeling Act and certain marking requirements under the Internal Revenue Code continue to apply to these products.

The guidance is intended to assist manufacturers in labeling beers that are subject to FDA's labeling laws and regulations. In general, FDA requires that food products under its labeling jurisdiction be truthfully and informatively labeled in accordance with the FD&C Act and the FPLA, and FDA's implementing regulations. These FDA labeling requirements are explained in the guidance document.

In the August 17, 2009, notice, FDA published a request for public comment on the proposed collection of information. FDA received one letter in response to the notice, containing multiple comments. Several comments in this letter were generally supportive of FDA's information collection provisions in the guidance. Additional comments were outside the scope of the four collection of information topics on which the notice solicits comments and will not be discussed in this document.

(Comment 1) One comment stated that FDA should require alcohol content labeling for the beers discussed in the guidance, including the percent alcohol by volume (%ABV); the amount of alcohol (in fluid ounces (oz) or grams) per serving; the definition of a "standard drink" (i.e., 12 fluid oz of regular beer, 5 fluid oz of wine, or 1.5 fluid oz of 80-proof distilled spirits); the number of standard drinks per container; and, the advice on moderate drinking, such as "The Dietary Guidelines for Americans recommends no more than one drink per day for women, two drinks per day for men." The comment stated that when a consumer sees a beverage such as "sorghum beer" or "wheat beer" labeled the same way that all other FDA regulated beverages are labeled, the consumer may not know that it is an alcoholic beverage.

(Response) FDA appreciates the concerns discussed in the comment. As explained in the guidance, certain TTB labeling requirements apply to these products. For example, these non-malt beers, like all alcohol beverages, are required to bear the health warning statement under the Alcoholic Beverage Labeling Act (27 U.S.C. 213–215). FDA's guidance documents do not establish legally enforceable requirements, and therefore cannot include mandatory language such as "shall, must, required, or requirement" unless specific regulatory or statutory requirements are cited. To the extent that the comment requests FDA to engage in rulemaking, the comment is outside the scope of the comment request on the four collection of information topics as they relate to the provisions of the draft guidance document.

The guidance is intended to assist manufacturers in labeling beers that are subject to FDA's labeling laws and regulations. All labeling regulations discussed in this guidance have been previously approved by OMB in accordance with the PRA under OMB control number 0910–0381. The regulations approved under OMB control number 0910–0381 include §§ 101.3, 101.4, 101.5, 101.9, 101.22, and 101.105 (21 CFR 101.3, 101.4, 101.5, 101.9, 101.22, and 101.105). The proposed information collection seeks to add manufacturers of certain beers that do not meet the definition of a "malt beverage" under the FAA Act as new respondents to these labeling regulations. The proposed information collection also seeks OMB approval of allergen labeling of these beers under section 403(w)(1) of the FD&C Act (21 U.S.C. 343(w)(1)), which was added by the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA).

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity, (i.e., the name of the product), including as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes the requirements for the declaration of ingredients on the label or labeling of food products in packaged form, including using the common or usual name of each ingredient. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives (§ 101.22(j)) in food products. Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form.

Under the FD&C Act, as amended by the FALCPA, the food source name of any "major food allergen" present must be declared (section 403(w)(1) of the FD&C Act). Section 201(qq) of the FD&C Act, (21 U.S.C. 321(qq)), defines "major food allergen" as milk, egg, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans, as well as any food ingredient that contains protein derived from one of them, with the exception of highly refined oils.

Description of respondents: The respondents to this collection of information are manufacturers of beers that are subject to FDA's labeling laws and regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN [1]

Citation	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
21 CFR 101.3 and 101.22	12	2	24	0.5	12
21 CFR 101.4	12	2	24	1	24
21 CFR 101.5	12	2	24	0.25	6
21 CFR 101.9	12	2	24	4	96

TABLE 1—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN [1]—Continued

Citation	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
21 CFR 101.105	12	2	24	0.5	12
Section 403(w)(1) of the FD&C Act	12	2	24	1	24
Guidance document entitled "Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration"	12	1	12	1	12
Total					186

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents in table 1 is based on the number of regulatory submissions submitted to TTB for beers that do not meet the definition of a "malt beverage" under the FAA Act. Based on its records of submissions received from manufacturers of such products, TTB estimates the number of respondents to be 12 and the number of disclosures annually to be 24. Thus, FDA adopts TTB's estimate of 12 respondents, and an annual number of disclosures per respondent of 2, in table 1 of this document.

FDA's estimate of the average burden per disclosure for each regulation are based on FDA's experience with food labeling under the Agency's jurisdiction. The estimated average burden per disclosure for §§ 101.3, 101.4, 101.5, 101.9, 101.22, and 101.105 in table 1 are equal to, and based upon, the estimated average burden per disclosure approved by OMB in OMB control number 0910–0381. FDA further estimates that the labeling burden of section 403(w)(1) of the FD&C Act, which specifies requirements for the declaration of food allergens, will be 1 hour based upon the similarity of the requirements to that of § 101.4. Finally, FDA estimates that a respondent will spend 1 hour reading the guidance document.

Thus, FDA estimates that 12 respondents will each label 2 products annually, for a total of 24 labels. FDA estimates that the manufacturers will spend 7.25 hours (0.5 hours + 1 hour + 0.25 hour + 4 hours + 0.5 hour + 1 hour = 7.25 hours) on each label to comply with FDA's labeling regulations and the requirements of section 403(w)(1) of the FD&C Act, for a total of 174 hours (24 labels × 7.25 hours = 174 hours). In addition, 12 respondents will each spend 1 hour reading the guidance document, for a total of 12 hours. Thus, FDA estimates the total hour burden of the proposed collection of information to be 186 hours (174 hours + 12 hours = 186 hours).

The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in §§ 101.3, 101.4, 101.5, 101.9, 101.22, and 101.105 have been approved under OMB control number 0910–0381.

II. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Memorandum of Understanding 225–88–2000 between FDA and Bureau of Alcohol, Tobacco and Firearms, available at *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/ucm116370.htm*.

2. TTB Ruling 2008–3 dated July 7, 2008, available at *http://www.ttb.gov/rulings/2008-3.pdf*.

Dated: July 16, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18028 Filed 7–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–1975–N–0336 (Formerly 75N–0184), FDA–1975–N–0355 (Formerly 75N–0185), FDA–1976–N–0272 (Formerly 76N–0056), FDA–1976–N–0344 (Formerly 76N–0057), FDA–1978–N–0701 (Formerly 78N–0070), FDA–1979–N–0224 (Formerly 79N–0169), FDA–1983–N–0297 (Formerly 83N–0030), and FDA–1988–N–0004 (Formerly 88N–0242); DESI 597, 1626, 3265, 10837, 12283, and 50213, and Hydrocortisone Acetate and Pramoxine Hydrochloride]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Prescription Drugs Offered for Various Indications; Opportunity To Affirm Outstanding Hearing Request

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is offering an opportunity to affirm outstanding hearing requests pertaining to several dockets. FDA will assume that companies with outstanding hearing requests that do not respond to this notice are no longer interested in pursuing their requests, and will deem the requests withdrawn.

DATES: *Effective Date:* This notice is effective August 23, 2012.

Hearing Requests: Hearing requests must be affirmed by notifying FDA by August 23, 2012. Hearing requests not affirmed within that timeframe will be deemed withdrawn.

ADDRESSES: Requests to affirm or withdraw outstanding hearing requests, as well as all other communications in response to this notice, should be identified with the appropriate docket number, and directed to Pamela Lee, Office of Unapproved Drugs and Labeling Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5173, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Pamela Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5173, Silver Spring, MD 20993–0002, 301–796–3297, email: *pamela.lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is offering an opportunity to affirm outstanding hearing requests pertaining to FDA Docket Nos. FDA–1975–N–0336 (formerly 75N–0184) (DESI 597); FDA–1976–N–0272 (formerly 76N–0056), FDA–1976–N–0344 (formerly 76N–0057), and FDA–1978–N–0701 (formerly 78N–0070) (DESI 1626); FDA–1975–N–0355 (formerly 75N–0185) (DESI 3265); FDA–1975–N–0336 (formerly 75N–0184) (DESI 10837); FDA–1979–N–0224 (formerly 79N–0169) (DESI 12283); FDA–1983–N–0297 (formerly 83N–0030) (DESI 50213); and FDA–1988–N–0004 (formerly 88N–0242).

I. Background

When initially enacted in 1938, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) required that "new drugs" (see 21 U.S.C. 321(p)) be approved for safety by FDA before they could legally be sold in interstate commerce. To this end, the FD&C Act made it the sponsor's responsibility, before marketing a new drug, to submit a new drug application (NDA) to FDA to prove that its drug was safe. Between 1938 and 1962, if a drug obtained approval, FDA considered drugs that were identical, related, or similar (IRS) (see (21 CFR 310.6(b)(1)) to the approved drug to be "covered" by that approval, and allowed those IRS drugs to be marketed without independent approval.

In 1962, Congress amended the FD&C Act to require that new drugs be proven effective for their labeled indications, as well as safe, to obtain FDA approval. This amendment also necessitated that FDA conduct a retrospective evaluation of the effectiveness of the drug products that FDA had approved as safe between 1938 and 1962. FDA contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to make an initial evaluation of the effectiveness of over 3,400 products that had been approved only for safety between 1938 and 1962. The NAS/NRC reports for these drug products were submitted to FDA in the late 1960s and early 1970s. The Agency reviewed and reevaluated the reports and published its findings in **Federal Register** notices. FDA's administrative implementation of the NAS/NRC reports was called the Drug Efficacy Study Implementation (DESI). DESI covered the approximately 3,400 products specifically reviewed by the NAS/NRC, as well as the even larger number of IRS products that entered the market without FDA approval.

All drugs covered by the DESI review are "new drugs" under the FD&C Act. If FDA's final DESI determination classifies a drug product as lacking substantial evidence of effectiveness for one or more indications, that drug product and those IRS to it may no longer be marketed for the indications and are subject to enforcement action as unapproved new drugs. If FDA's final DESI determination classifies the drug product as effective for one or more of its labeled indications, the drug can be marketed for those indications, provided it is the subject of an application approved for safety and effectiveness. Sponsors of drug products that have been found to be effective for one or more indications through the DESI process may rely on FDA's effectiveness determinations, but typically must update their labeling to conform to the indications found to be effective by FDA and to include any additional safety information required by FDA. Those drug products with NDAs approved before 1962 for safety therefore require approved supplements to their original applications if found to be effective under DESI; IRS drug products require an approved NDA or abbreviated new drug application (ANDA), as appropriate. Furthermore, labeling for drug products classified as effective may contain only those indications for which the review found the product effective unless the firm marketing the product has received an approval for the additional indication(s).

II. Outstanding Hearing Requests Pertaining to Docket Nos. FDA–1975–N–0336 (Formerly 75N–0184) (DESI 597); FDA–1976–N–0272 (Formerly 76N–0056), FDA–1976–N–0344 (Formerly 76N–0057), and FDA–1978–N–0701 (Formerly 78N–0070) (DESI 1626); FDA–1975–N–0355 (Formerly 75N–0185) (DESI 3265); FDA–1975–N–0336 (Formerly 75N–0184) (DESI 10837); FDA–1979–N–0224 (Formerly 79N–0169) (DESI 12283); FDA–1983–N–0297 (Formerly 83N–0030) (DESI 50213); and FDA–1988–N–0004 (Formerly 88N–0242)

In 2006, FDA announced a new drug safety initiative to address unapproved drugs currently being marketed in the United States, and to facilitate a rational process to bring all such unapproved drugs into the approval process. As part of the Unapproved Drugs Initiative, the Office of Compliance of the Center for Drug Evaluation and Research is reviewing proceedings that remain open under DESI. According to FDA's records, the dockets discussed in this document contain pending hearing requests.

This **Federal Register** notice identifies the products that are the subjects of hearing requests to the extent possible based on the information contained in the hearing requests. In some cases, the companies requesting hearings identified the product that was the subject of the hearing request by name. In other cases, the company simply identified the subject of its hearing request as a product that is IRS to one of the products reviewed under DESI. In yet other cases, there is no information provided by the requester about the product that is the subject of its hearing request.

In cases where FDA was able to obtain current contact information for a company (or its successor-in-interest) or its representative, FDA sent letters directly to the companies (or their successors-in-interest) and/or their representatives requesting that outstanding hearing requests be withdrawn or affirmed within a specified timeframe. In some cases, however, FDA was unable to find current contact information for the companies that requested hearings. Because many of the products that are the subjects of these hearing requests may no longer be marketed and some of the companies that requested hearings may no longer be in business, FDA is seeking to determine whether there is continued interest in pursuing these outstanding hearing requests. It should be noted that the discussion of DESI dockets does not provide a comprehensive historical record of each docket and, therefore, will not identify every request that had been previously addressed.

Through this **Federal Register** notice, FDA seeks to have any company with an outstanding hearing request covered by this notice that has not already responded to a direct communication from FDA either withdraw or affirm its hearing request. FDA will assume that companies with outstanding hearing requests that do not respond to this notice are no longer in business and/or do not have a continuing interest in the hearings, and FDA will deem their requests withdrawn.

To withdraw an outstanding hearing request, a company (or its successor-in-interest) or its representative should send a letter stating its intention to do so to Pamela Lee (see **ADDRESSES**). The letter should include the docket number of the proceeding, as well as the name

and National Drug Code (NDC) number of the product that is the subject of the hearing request.

To affirm an outstanding hearing request, a company (or its successor-in-interest) or its representative should send a letter stating its intention to do so to Pamela Lee (see **ADDRESSES**). The letter should include the docket number of the proceeding, as well as the name and NDC number of the product that is the subject of the hearing request. Letters affirming outstanding hearing requests must be postmarked or emailed by the date specified in this notice (see **DATES**). Only currently outstanding hearing requests may be affirmed; this notice does not provide a new opportunity to request a hearing under any of these dockets.

A. Certain Drug Products Containing an Anticholinergic in Combination With a Barbituate; Docket No. FDA–1975–N–0336 (Formerly 75N–0184) (DESI 597)

Under Docket No. FDA–1975–N–0336 (formerly 75N–0184), FDA determined that certain drug products containing an anticholinergic in combination with a barbiturate lacked substantial evidence of effectiveness for various gastrointestinal disorders, and offered an opportunity for hearing regarding its conclusion (48 FR 20495, May 6, 1983). In response to the May 1983 notice, the following companies filed timely hearing requests: A.H. Robins Co. (now part of Pfizer, Inc., 235 East 42nd St., New York, NY 10017), regarding Donnatal Tablets (ANDA 86–676), Capsules (ANDA 86–677), and Elixir (ANDA 86–661); B.F. Ascher & Co., Inc., 15501 W. 109th St., Lenexa, KS 66219, regarding Anaspaz-PB; Bay Laboratories, Inc., 3654 West Jarvis, Skokie, IL 60076, regarding Bay-Ase Elixir (ANDA 86–673); Beecham Laboratories, a Division of Beecham, Inc. (now part of Glaxo SmithKline, 200 N 16th St., #1, Philadelphia, PA 19102), regarding Hybephen (ANDA 86–573); Carter-Wallace, Inc. (now part of Meda Pharmaceuticals, Inc., 265 Davidson Ave., Suite 300, Somerset, NJ 08873–4120), regarding Barbidonna Tablets (ANDA 86–589), Barbidonna Elixir (ANDA 86–590), and Barbidonna No. 2 Tablets (ANDA 87–572); Ferndale Laboratories, Inc. (now part of Ferndale Pharma Group, Inc., 780 W. Eight Mile Rd., Ferndale, MI 48220), regarding Bellkatal Tablets and Pheno-Bella Tablets; Halsey Drug Co., Inc. (now part of Acura Pharmaceuticals, Inc., 616 N. North Court, Suite 120, Palatine, IL 60067), regarding Susano Elixir (ANDA 86–587) and Susano Tablets (ANDA 86–588); Kremers-Urban Co. (now part of Kremers-Urban Pharmaceuticals, Inc., 902 Carnegie Center, Suite 360, Princeton, NJ 08540), regarding Levsin with Phenobarbital Tablets (ANDA 86–640); Lemmon Co. (now part of Teva Pharmaceuticals, 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454–1090), regarding Belladonna Alkaloids and Phenobarbital Tablets (ANDA 86–591); McNeil Pharmaceutical (now part of Ortho-McNeil-Janssen Pharmaceuticals, Inc., 1125 Trenton-Harbourton Rd., P.O. Box 200, Titusville, NJ 08568), regarding Butibel Tablets and Butibel Elixir (ANDA 86–664); National Pharmaceutical Manufacturing Co. (now part of Actavis US, 60 Columbia Rd., Bldg. B, Morristown, NJ 07960), regarding Barophen Elixir (ANDA 86–546) and Butabar Belladonna Elixir (ANDA 86–561); Purepac Pharmaceutical (now part of Actavis US, 60 Columbia Rd., Bldg. B, Morristown, NJ 07960), regarding Belladonna Alkaloids with Phenobarbital Tablets and Elixir; Reid-Provident Laboratories, Inc. (now part of Abbott Laboratories, 100 Abbott Park Rd., Abbott Park, IL 60064–3500), regarding Spalix Elixir (ANDA 86–652) and Spalix Tablets (ANDA 86–653); Richlyn Laboratories, Inc. (now part of Impax Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544), regarding Bellophen (ANDA 86–687) and Spasmolin (ANDA 86–655); Sandoz, Inc., 506 Carnegie Center, Suite 400, Princeton, NJ 08540, regarding Belladenal Tablets (ANDA 86–668) and Belladenal S Tablets (ANDA 87–198); Stuart Pharmaceuticals, Division of ICI Americas, Inc. (now part of AstraZeneca Pharmaceuticals LP, 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437), regarding Kinesed Tablets; Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102, regarding Barbeloid Tablets, Green (NDA 85–532) and Barbeloid Tablets, Yellow (NDA 86–549); West-ward Pharmaceutical Corp., 401 Industrial Way West, Eatontown, NJ 07724–2206, regarding Belladonna Alkaloid with Phenobarbital Tablets; William P. Poythress & Co., Inc., 16 N. 22nd St., P.O. Box 26946, Richmond, VA 23261, regarding unidentified products composed of atropine sulfate 0.195 milligrams (mg) in combination with phenobarbital 16 mg; William Rorer, Inc. (now part of Sanofi-Aventis U.S., 55 Corporate Dr., Bridgewater, NJ 08807), regarding Chardonna-2 Tablets (ANDA 86–585); and Wharton Laboratories, Inc., 48th Ave., Long Island City, NY 11101, regarding Bellastal Capsules (ANDA 86–657).

In May, June, and July 2011, FDA sent letters to the following companies requesting that they withdraw or affirm their outstanding hearing requests under this docket within 30 days: Pfizer, Inc.; B.F. Ascher & Co., Inc.; Glaxo SmithKline; Meda Pharmaceuticals, Inc.; Ferndale Pharma Group, Inc.; Acura Pharmaceutical Co.; Kremers-Urban Pharmaceuticals, Inc.; Teva Pharmaceuticals; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; Actavis US; Abbott Laboratories; Impax Laboratories, Inc.; Sandoz, Inc.; AstraZeneca Pharmaceuticals LP; West-ward Pharmaceutical Corp.; and Sanofi-Aventis U.S.

On May 24, 2011, Actavis US withdrew the hearing request filed by National Pharmaceutical Manufacturing Co. On May 26, 2011, Teva Pharmaceuticals and Impax Laboratories, Inc., withdrew the hearing requests filed by Lemmon Co. and Richlyn Laboratories, Inc., respectively. On June 2, 2011, Ferndale Pharma Group, Inc., withdrew its hearing request. On June 3, 2011, AstraZeneca Pharmaceuticals, LP, withdrew the hearing request filed by Stuart Pharmaceuticals. On June 6, 2011, Acura Pharmaceutical Co. withdrew the hearing request filed by Halsey Drug Co., Inc. On June 7, 2011, Johnson & Johnson Pharmaceutical Research & Development, LLC, responded to the letter sent to Ortho-McNeil-Janssen Pharmaceuticals, Inc., stating that the rights to Butibel Elixir had been transferred to Carter Wallace in 1982. On June 20, 2011, B.F. Ascher & Co., Inc., withdrew its hearing request. On June 22, 2011, Novartis Pharmaceuticals Corp., the successor-in-interest by merger to Sandoz, Inc., withdrew Sandoz, Inc.'s hearing request. On July 7, 2011, Meda Pharmaceuticals, Inc., withdrew the hearing request filed by Carter-Wallace, Inc., as well as the hearing request filed by McNeil Pharmaceutical for Butibel Tablets and Elixir. On July 27, 2011, Kremers-Urban Co. withdrew its hearing request. On August 11, 2011, GlaxoSmithKline withdrew the hearing request filed by Beecham Laboratories. On August 24, 2011, Abbott Laboratories withdrew the hearing request filed by Reid-Provident Laboratories, Inc.

On July 6, 2011, West-ward Pharmaceutical Corp. affirmed its hearing request and PBM Pharmaceuticals, Inc., affirmed the hearing request filed by A.H. Robins Co., as the asserted successor-in-interest to A.H. Robins Co.'s hearing request. A **Federal Register** notice issued on June 8, 2011 (76 FR 33310), withdrew the approval of 70 NDAs and 97 ANDAs. This included the withdrawal of the approval for Donnatal Capsules and

withdrawal of the conditional approval for the Donnatal Tablets and Elixir. This withdrawal notice was subsequently corrected to note that the approval and conditional approvals for these products were still in effect, because PBM Pharmaceuticals, Inc., had acquired the rights to the ANDAs and had informed FDA before the withdrawal would have become effective that it did not want the ANDAs withdrawn (76 FR 79701, December 22, 2011).

As of April 1, 2012, Actavis U.S. (with respect to the hearing request filed by Purepac Pharmaceutical) and Sanofi-Aventis U.S. had not responded to FDA. FDA was unable to find current contact information for Bay Laboratories, Inc.; Vale Chemical Co., Inc.; William P. Poythress & Co., Inc.; and Wharton Laboratories, Inc. If any of these companies, or any successor-in-interest, continues to have an interest in pursuing its hearing request under this docket, the companies (or their successors-in-interest) must affirm their hearing requests in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

B. Combination Drugs Containing a Xanthine Derivative; Docket No. FDA–1976–N–0272 (Formerly 76N–0056), FDA–1976–N–0344 (Formerly 76N–0057), and FDA–1978–N–0701 (Formerly 78N–0070) (DESI 1626)

In 1972, FDA classified certain combination drug products containing a xanthine derivative as less than effective for some labeled indications and possibly effective for other labeled indications (37 FR 14895, July 26, 1972). As described in a **Federal Register** notice of February 29, 1984, FDA subsequently handled these products in three groups: (1) Combinations containing more than 2 grains of xanthine derivative, more than 8 mg of phenobarbital, and/or an ingredient not considered as part of the over-the-counter (OTC) drug review (Docket No. FDA–1976–N–0272 (formerly 76N–0056)); (2) combinations containing 2 grains or less of a xanthine derivative, ephedrine, and 8 mg or less of phenobarbital (Docket No. FDA–1976–N–0344 (formerly 76N–0057)); and (3) combinations containing theophylline, ephedrine, and hydroxyzine hydrochloride (HCl) (Docket No. FDA–1978–N–0701 (formerly 78N–0070)) (49 FR 7454, February 29, 1984).

In 1976, FDA reclassified certain combination preparations containing a xanthine derivative to lacking substantial evidence of effectiveness, proposed withdrawing associated NDAs, and offered an opportunity for hearing regarding its proposal (41 FR 15051, April 9, 1976). The group of products addressed in the April 1976 notice contained more than 2 grains of xanthine derivative, a barbiturate in higher strength than the equivalent of 8 mg of phenobarbital, and/or an ingredient not considered as part of the OTC drug review (Docket No. FDA–1976–N–0272 (formerly 76N–0056)) (id.). The holders of the NDAs listed in the April 1976 notice did not request hearings, and those NDAs were withdrawn in October 1977 (42 FR 54620, October 7, 1977). However, in response to the April 1976 notice, the following companies filed timely hearing requests: Knoll Pharmaceutical Co. (now part of Abbott Laboratories, 100 Abbott Park Rd., Abbott Park, IL 60064–3500), regarding Quadrinal Tablets and Suspension, and Mead Johnson Laboratories (now Mead Johnson Nutrition, 4th Floor, 2701 Patriot Blvd., Glenview, IL 60026), regarding Quibron Plus Capsules and Elixir.

In 1984, FDA amended the April 1976 notice to include its analysis of new information regarding combination products containing a xanthine derivative (49 FR 7454, February 29, 1984). Based on its analysis of the new information, FDA concluded that there is a lack of substantial evidence that: (1) Each ingredient contributes to the claimed effect of such combination drug products, and (2) the dosage of each component is such that the combinations are safe and effective for a significant patient population (id.). Therefore, FDA proposed in the 1984 notice to withdraw approval of the applications for combination products containing a xandine derivative, and offered an opportunity for hearing regarding its proposal. In response to the February 1984 notice, the following companies filed timely hearing requests: National Pharmaceutical Manufacturing Co. (now part of Actavis US, 60 Columbia Rd., Bldg. B, Morristown, NJ 07960), regarding Brondelate Elixir, Ferdinal Suspension, Guiaphed Elixir, Hydroxyzine Compound Syrup, Iophylline Elixir, Isolate Compound Elixir, and Theofed Suspension and Liquid; Warner Lambert Co. (now part of Pfizer, Inc., 235 East 42nd St., New York, NY 10017), regarding Tedral SA; and William P. Poythress & Co., Inc., 16 N. 22nd St., P.O. Box 26946, Richmond, VA 23261, regarding an unidentified product containing a xanthine derivative, ephedrine, and 8 mg or less of phenobarbital.

In March and April 2011, FDA sent letters to Abbott Laboratories, Actavis US, Mead Johnson Nutrition, and Pfizer, Inc., requesting that these companies withdraw or affirm their outstanding hearing requests under this docket within 30 days.

On April 25, 2011, Mead Johnson Nutrition withdrew the hearing request filed by Mead Johnson Laboratories. On May 3, 2011, Pfizer, Inc. withdrew the hearing request filed by Warner Lambert Co. On May 9, 2011, Actavis US withdrew the hearing request filed by National Pharmaceutical Manufacturing Co. On June 21, 2011, Abbott Laboratories withdrew the hearing request filed by Knoll Pharmaceutical Co.

FDA was unable to find current contact information for William P. Poythress & Co. If this company, or its successor-in-interest, continues to have an interest in pursuing its hearing request under this docket, the company (or its successor-in-interest) must affirm its hearing request in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

C. Certain Single Entity Antispasmodic Drugs; Docket No. FDA–1975–N–0355 (Formerly 75N–0185) (DESI 3265)

In 1971, FDA published DESI efficacy findings for single-ingredient anticholinergic drugs for oral or injectable use containing dicyclomine HCl and piperidolate HCl, among other ingredients (36 FR 11754, June 18, 1971). In a notice published on November 11, 1975 (40 FR 52644), FDA determined that the June 18, 1971, **Federal Register** notice should not have included drugs containing certain specified ingredients, including dicyclomine HCl and piperidolate HCl, because the drugs containing those ingredients were not anticholinergic drugs. Also on November 11, 1975, FDA published a notice of opportunity for hearing regarding these drugs (40 FR 52649). In response to the November 1975 notice, the following companies filed timely hearing requests: Carnrick Laboratories, Inc., 65 Horsehill Rd., Cedar Knolls, NJ 07927, regarding Midrin, and Merrell-National Laboratories, 110 Amity Rd., Cincinnati, OH 45215, regarding Bentyl Capsules (NDA 7–409), Bentyl Injection (NDA 8–370), Bentyl Syrup (NDA 7–961), and Dactil Tablets (NDA 8–907).

In September 2011, FDA sent letters to counsel for Carnrick Laboratories, Inc., which FDA believed operated as a subsidiary of Elan Corporation PLC, and

to Sanofi-Aventis U.S., which FDA believes to be the successor-in-interest to Merrell-National Laboratories. In September 2011, Carnrick Laboratories, Inc.'s former counsel informed FDA that it did not represent Carnrick Laboratories, Inc., or Elan Corporation PLC with respect to the hearing request under DESI 3265. In October 2011, FDA sent a letter to Sun Pharmaceutical Industries, Inc., believing it to be the successor-in-interest to Carnrick Laboratories, Inc.'s hearing request. On November 3, 2011, a representative from Sun Pharmaceutical Industries, Inc., verbally informed FDA that it was withdrawing the hearing request filed by Carnrick Laboratories, Inc., and stated they would be submitting their withdrawal of the hearing request in writing.

As of April 1, 2012, Sanofi-Aventis U.S. has not responded to FDA. If this company, or the successor-in-interest, continues to have an interest in pursuing the hearing request filed by Merrell-National Laboratories under this docket, the company (or its successor-in-interest) must affirm the hearing request in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

D. Certain Anticholinergics/ Antispasmodics in Combination With a Sedative, and Single-Entity Antispasmodics, in Conventional Dosage Form; Docket No. FDA–1975–N–0336 (Formerly 75N–0184) (DESI 10837)

Through DESI review, FDA determined that two products, Pathibamate and Milpath Tablets, both containing tridihexethyl chloride and meprobamate, were possibly effective as adjunctive therapy in peptic ulcer and in the irritable bowel syndrome, functional diarrhea, drug-induced diarrhea, ulcerative colitis, urinary bladder spasm, and urethral spasm (36 FR 11875, June 22, 1971). In 1981, FDA reclassified these products to lacking substantial evidence of effectiveness, proposed withdrawing associated NDAs, and offered an opportunity for hearing regarding its proposal (46 FR 3977, January 16, 1981). In response to the January 1981 notice, the following companies filed timely hearing requests: Cord Laboratories (now part of Sandoz, Inc., 2555 West Midway Blvd., Broomfield, CO 80020), regarding Chlordinium Capsules (ANDA 86–667); Roche Laboratories (now part of Genentech, Inc., 1 DNA Way, South San Francisco, CA 94080–4990), regarding Librax; and Premo Pharmaceutical Laboratories, Inc. (now part of Teva Pharmaceuticals, 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454–1090), regarding Meprohex 200 (ANDA 86–674), Meprohex 400 (ANDA 86–658), and chlordinium capsules (ANDA 86–667).

FDA sent letters to Genentech, Inc., in November 2010, and to Sandoz, Inc., and counsel of record for Premo Pharmaceutical Laboratories, Inc., in January 2011, requesting that these companies withdraw or affirm their outstanding hearing requests under this docket within 30 days. At the time, FDA was unable to find a current address for Premo Pharmaceutical Laboratories, Inc., and did not know that the company is part of Teva Pharmaceuticals.

On February 4, 2011, Genentech, Inc., informed FDA that it was no longer interested in pursuing the hearing request filed by Roche Laboratories, but noted that it had sold the rights of the product that was the subject of the hearing request to Valeant Pharmaceuticals International, Inc. On February 28, 2011, Sandoz, Inc., withdrew the hearing request filed by Cord Laboratories. On March 15, 2011, Teva Pharmaceuticals withdrew the hearing request filed by Premo Pharmaceutical Laboratories, Inc.

In March 2011, FDA sent a letter to Valeant Pharmaceuticals International, Inc., requesting that the company withdraw or affirm the outstanding hearing request filed by Roche Laboratories under this docket within 30 days. As of April 1, 2012, Valeant Pharmaceuticals International, Inc., had not responded to FDA. If this company, or its successor-in-interest, continues to have an interest in pursuing its hearing request under this docket, the company (or its successor-in-interest) must affirm its hearing request in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

E. Chlorthalidone; Docket No. FDA–1979–N–0224 (Formerly 79N–0169) (DESI 12283)

In 1979, as part of the DESI review, FDA announced its conclusions regarding the effectiveness of chlorthalidone for the treatment of hypertension and certain types of edema (44 FR 54124, September 18, 1979). Specifically, FDA determined that there was substantial evidence to support the effectiveness of the 25- and 50-mg strengths for use in hypertension, but that there was no longer justification for the 100-mg dosage form of chlorthalidone because of safety concerns at that dosage level (id. at 54126). The 1979 notice proposed to withdraw approval of the 100-mg strength and offered an opportunity for hearing regarding its proposal. In response to the 1979 notice, the following companies filed timely hearing requests: Generics International Division of Apotex, Inc., 2400 North Commerce Pkwy., suite 400, Weston, FL 33326, regarding Chlorthalidone, and USV Pharmaceutical Corp. (now part of Sanofi-Aventis U.S., 55 Corporate Dr., Bridgewater, NJ 08807), regarding Hygroton (NDA 12–283).

FDA sent letters to Sanofi-Aventis U.S. and Apotex, Inc., in May 2011 and July 2011, respectively, requesting that the companies withdraw or affirm their outstanding hearing requests under this docket within 30 days.

On August 12, 2011, Sanofi-Aventis U.S. withdrew the outstanding hearing request filed by USV Pharmaceutical Corp. As of April 1, 2012, Apotex, Inc., had not responded to FDA. If this company, or its successor-in-interest, continues to have an interest in pursuing its hearing request under this docket, the company (or its successor-in-interest) must affirm its hearing request in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

F. Chlortetracycline and Tetracycline; Docket No. FDA–1983–N–0297 (Formerly 83N–0030) (DESI 50213)

Through DESI review, FDA determined that certain fixed-combination drugs containing antibiotics and sulfonamides lack substantial evidence of effectiveness (34 FR 6008, April 2, 1969). The April 1969 **Federal Register** notice proposed to revoke provisions for certification of these products and offered interested persons 30 days to submit data concerning the proposal. Data submitted in response to the April 1969 notice did not provide substantial evidence of effectiveness, so FDA amended the antibiotic regulations on June 30, 1970, by revoking provisions for the certification of these drugs (35 FR 10587, June 30, 1970). The order was to become effective in 40 days, and allowed 30 days for interested persons to file objections and request a hearing. The time for responding to the June 1970 order was subsequently extended until August 17, 1970 (35 FR 12653, August 8, 1970).

In response to the June 1970 order, Pfizer, Inc., submitted data regarding its

affected product, Urobiotic 250 Capsules, and requested a hearing. Despite the filing of timely objections, the amendments were inadvertently not stayed, and succeeding codifications of the antibiotic regulations did not explicitly provide for certification of Urobiotic 250 Capsules. However, FDA permitted Pfizer, Inc., to continue distribution of its product pending resolution of the firm's hearing request. In July 2010, Pfizer, Inc., voluntarily withdrew its application for Urobiotic (*see* 75 FR 42455, July 21, 2010), but its hearing request remains pending.

In October 2010, FDA sent Pfizer, Inc., a letter requesting that it withdraw or affirm its outstanding hearing request under this docket within 30 days. As of April 1, 2012, Pfizer, Inc., had not responded to FDA. If Pfizer, Inc. (or its successor-in-interest), continues to have an interest in pursuing its hearing request under this docket, the company (or its successor-in-interest) must affirm its hearing request in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

G. Hydrocortisone Acetate and Pramoxine HCl; Docket No. FDA–1988–N–0004 (Formerly 88N–0242)

Through DESI review, FDA determined that topical corticosteroids, including hydrocortisone acetate, were effective for symptomatic relief and adjunctive management of various steroid-responsive dermatoses (36 FR 7982, April 28, 1971). In the mid-1970s, FDA approved several products under ANDAs listing hydrocortisone acetate as their sole active ingredient. Subsequently, FDA determined that these products also contained an anesthetic active ingredient, pramoxine HCl. FDA evaluated the effectiveness of the fixed-combination and found no evidence that the pramoxine HCl component contributes an effect to the combination drug (53 FR 25013, July 1, 1988). Thus, FDA proposed to withdraw the ANDAs for these products and offered an opportunity for hearing on its proposal (id).

In response to the July 1988 notice, the following companies filed timely hearing requests: Copley Pharmaceutical, Inc., 398 West Second St., Boston, MA 02127, regarding a topical aerosol foam hydrocortisone and pramoxine HCl product (ANDA 89–440); Ferndale Laboratories, Inc. (now part of Ferndale Pharma Group, Inc., 780 W. Eight Mile Rd., Ferndale, MI 48220), regarding Pramosone lotion (0.5% hydrocortisone acetate) (ANDA 83–213), Pramosone cream (0.5% hydrocortisone acetate) (ANDA 83–778), Pramosone cream (1.0% hydrocortisone acetate) (ANDA 85–368), Pramosone lotion (1.0% hydrocortisone acetate) (ANDA 85–979), Pramosone lotion (2.5% hydrocortisone acetate) (ANDA 85–980), Pramosone ointment (1% hydrocortisone acetate), Pramosone ointment (2.5% hydrocortisone acetate), Pramosone cream (2.5% hydrocortisone acetate), Enzone cream, Zone-A lotion, Zone-A Forte lotion, Zone-A cream, FEP cream, Dibucort cream, and Procto-cream HC; and Reed & Carnrick (now part of Meda Pharmaceuticals, Inc., 265 Davidson Ave., suite 300, Somerset, NH 08873–4120), regarding its topical aerosol foam hydrocortisone and pramoxine HCl products (ANDAs 86–195 and 86–457).

In November 2010, FDA sent letters to Copley Pharmaceutical, Inc.; Ferndale Pharma Group, Inc.; and Meda Pharmaceuticals, Inc., requesting that these companies (or their successors-in-interest) withdraw or affirm their outstanding hearing requests under this docket within 30 days. On January 3, 2011, counsel for Ferndale Laboratories, Inc., and Meda Pharmaceutical, Inc., sent a letter affirming the hearing requests made by both companies.

As of April 1, 2012, Copley Pharmaceutical, Inc., had not responded to FDA. If this company (or its successor-in-interest) continues to have an interest in pursuing its hearing request under this docket, the company (or its successor-in-interest) must affirm its hearing request in writing by the date specified in this notice (see **DATES**). FDA will assume that hearing requests that are not affirmed within that timeframe are no longer being pursued, and will deem them withdrawn.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 502 and 505 (21 U.S.C. 352 and 355)).

Dated: July 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–18015 Filed 7–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding Section 340B of the Public Health Service Act Registration Period

AGENCY: Department of Health and Human Services, Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing this notice to inform stakeholders of the revised deadlines for registration of new covered entities and for adding outpatient facilities and contract pharmacy arrangements to the 340B Drug Pricing Program (340B Program).

DATES: Effective Date: October 1, 2012.

FOR FURTHER INFORMATION CONTACT: CDR Krista Pedley, Director, OPA, HSB, HRSA, 5600 Fishers Lane, Parklawn Building, Room 10C–03, Rockville, MD 20857, or by telephone at 301–594–4353.

SUPPLEMENTARY INFORMATION:

I. Background

Section 340B(a)(4) of the Public Health Service Act (PHS) Act (42 U.S.C. 256b) lists the various types of organizations eligible to participate in and purchase discounted drugs under the 340B Program. For a complete list of eligible entities, visit the OPA Web site at *http://www.hrsa.gov/opa.introduction.htm*. Eligibility for participation in the 340B Program is limited to the categories of entities specified in this section of the statute. Section 340B(a)(9) of the PHS Act requires the Secretary to notify participating manufacturers of the identity of those entities that meet the definition of covered entity under 340B(a)(4). HRSA published final guidelines on the participation of outpatient facilities in the **Federal Register** at 59 FR 47884 (Sept. 19, 1994). HRSA published final guidelines on the utilization of Contract Pharmacy Arrangements in the **Federal Register** at 75 FR 10272 (March 5, 2010).

II. Registration Deadlines

This notice replaces all previous 340B Program guidance documents addressing the deadline and enrollment period for the 340B Program registration of new covered entities, addition of outpatient facilities and contract pharmacies, including any individual

correspondence issued by HRSA on the subject.

(A) Registration Period for New Covered Entities and for the Addition of Outpatient Facilities

The registration period for 340B Program registration of new covered entities and the addition of outpatient facilities shall be limited to the following: January 1–January 15 for an effective start date of April 1; April 1–April 15 for an effective start date of July 1; July 1–July 15 for an effective start date of October 1; and October 1–October 15 for an effective start date of January 1.

In situations where the 15th falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day. Covered entities will not be able to submit registrations outside of these date parameters listed above except when the Secretary has declared a Public Health Emergency. In addition to the complete on-line registration, any required supporting documentation must be submitted on the same day as on-line registration is completed. Incomplete packages will not be considered. For more information on what constitutes a complete package, visit the Office of Pharmacy Affairs (OPA) Web site at *www.hrsa.gov/opa.*

(B) Registration Period for Contract Pharmacies

The registration period for 340B Program registration of contract pharmacies shall be limited to the following: January 1–January 15 for an effective start date of April 1; April 1–April 15 for an effective start date of July 1; July 1–July 15 for an effective start date of October 1; and October 1–October 15 for an effective start date of January 1.

In situations where the 15th falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day. The contract pharmacy registration process is not complete unless the registration form has been completed in its entirety and the original, signed copy is received by OPA.

Signed contract pharmacy registration forms are due to OPA within 15 days from the time online registration was completed. Incomplete packages will not be considered. For more information on what constitutes a complete package, visit the OPA Web site at *www.hrsa.gov/opa.*

(C) Other Deadlines

Deadlines for forms other than those listed above are not affected by this notice. For example, change requests are not affected by this notice and will be processed as they are received.

Dated: July 17, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–17969 Filed 7–23–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 (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 Heart, Lung, and Blood Institute Special Emphasis Panel; Jackson Heart Study RFA Review.

Date: August 15, 2012.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tony L Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; National Health Survey Proposals.

Date: August 15, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephanie J Webb, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18071 Filed 7–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NET–PD Competitive Renewal Review.

Date: August 20, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Chicago O'Hare Airport-Rosemont, 5460 North River Road, Rosemont, IL 60018.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18070 Filed 7–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–12–006, Promoting Organ and Tissue Donation Among Diverse Populations.

Date: August 22, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@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: July 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18067 Filed 7–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of 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 section 552b(c)(4) and (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 Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–Z 42 2.

Date: August 8, 2012.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–18057 Filed 7–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given for the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) on August 8, 2012.

A portion of the meeting will be open and will include discussion of the Affordable Care Act, as well as CSAP program and budget developments.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, and in accordance with Title 5 U.S.C. 552b(c) and 5 U.S.C. App. 2, Section 10(d).

The meeting will be held online via Live Meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Matthew J. Aumen.

Committee Name: Substance Abuse and Mental Health Services, Administration Center for Substance Abuse Prevention, National Advisory Council.

Date/Time/Type: August 8, 2012 from 10 a.m. to 3 p.m. EDT: (OPEN), August 8, 2012 from 3 p.m. to 4:30 p.m. EDT: (CLOSED).

Place: Live meeting webcast: *https://www.mymeetings.com/nc/join.php?i=PW8343833&p=4126317&t=c,* Pass code: 4126317.

Contact: Matthew J. Aumen, Designated Federal Officer, SAMHSA CSAP NAC, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: 240–276–2419, Fax: 240–276–2430 and Email: *matthew.aumen@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2012–18014 Filed 7–23–12; 8:45 am]

BILLING CODE 4162–20–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of ACHP Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, August 9, 2012. The meeting will be held in the Trustee Room at The Ballantine House at the Newark Museum at 49 Washington Street, Newark, NJ at 8:30 a.m. The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470

et seq.) to advise the President and Congress on national historic preservation policy and to comment upon federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-federal members appointed by the President.

Call to Order-8:30 a.m.

I. Chairman's Welcome
II. Chairman's Award
III. Preserve America Recognition
IV. Chairman's Report
V. ACHP Management Issues
  A. Federal Budget Austerity and the ACHP
  B. Alumni Foundation Report
  C. Implementation of Preservation Action Task Force Recommendations To Improve the Federal Program Structure
IV. Forum Discussion Follow-up—Building a More Inclusive Preservation Program
V. Historic Preservation Policy and Programs
  A. Legislative Agenda
  B. Rightsizing Task Force Report
  C. Sustainability Task Force Report
  D. United Nations Declaration on the Rights of Indigenous Peoples
  E. Fiftieth Anniversary of the National Historic Preservation Act
VI. Section 106 Issues
  A. Guidance on Coordinating and Substituting NEPA and Section 106 Compliance
  B. Traditional Cultural Landscapes Action Plan Implementation
  C. FHWA Program Comment on Bridges
  D. Executive Order on Infrastructure Projects
VII. New Business
VIII. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Room 803, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting. Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., #803, Washington, DC 20004.

Dated: July 18, 2012.

John M. Fowler,

Executive Director.

[FR Doc. 2012–17941 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0076]

Agency Information Collection Activities: Sponsor's Notice of Change of Address, Form I–865, Extension Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 24, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–865. Should USCIS decide to revise Form I–865 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–865.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2007–0007.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without Change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–865. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary*: Individuals or Households. This form will be used by every sponsor who has filed an Affidavit of Support under Section 213A of the Immigration and Nationality Act to notify the USCIS of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at:

http://www.regulations.gov. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: July 11, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–17317 Filed 7–23–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No. 1615–0059]

Agency Information Collection Activities: Application for Posthumous Citizenship, Form N–644; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice.

* * * * *

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 24, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–0059 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2007–0004.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Application for Posthumous Citizenship, Form N–644; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 respondents and an estimated average burden per response of 1.833 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–1470.

Dated: July 17, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–17835 Filed 7–23–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control No.1615–0018]

Agency Information Collection Activities: Application for Permission To Reapply for Admission Into the United States After Deportation or Removal, Form I–212;. Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. An information collection notice was previously published in the **Federal Register** on May 1, 2012, at 77 FR 25722, allowing for a 60-day public comment period. USCIS received a comment for this information collection notice.

The purpose of this notice is to allow for an additional 30 days for public comments. Comments are encouraged

and will be accepted until August 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, Clearance Office, 20 Massachusetts Avenue, Washington, DC 20529. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov*, and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov*. When submitting comments by email, please make sure to add OMB Control Number 1615–0018 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0077.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Permission To Reapply for Admission Into the United States After Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–212; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information provided on Form I–212 to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,877 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,754 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone 202–272–1470.

Dated: July 17, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–17836 Filed 7–23–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5635–N–01]

Federally Mandated Exclusions From Income

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD's regulations provide that HUD will periodically publish a **Federal Register** notice listing the amounts specifically excluded by any Federal statute from consideration as income for purposes of determining eligibility or benefits. This notice lists those exclusions. This notice also lists federal statutes that require certain income sources to be disregarded with regard to specific HUD programs. This notice updates the list of exclusions last published on April 20, 2001, by amending, removing, and adding exclusions.

FOR FURTHER INFORMATION CONTACT: For the Rent Supplement, section 236, and Project-based Section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone number 202–401–7914. For other Section 8 programs administered under 24 CFR part 882 (Moderate Rehabilitation) and under part 982 (Housing Choice Voucher), and the Public Housing Programs: Shauna Sorrells, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4206, Washington, DC 20410, telephone: number 202–402–2769, or the Public and Indian Housing Information Resource Center at 1–800–955–2232. For Indian Housing Programs: Rodger Boyd, Deputy Assistant Secretary, Office of Native American Programs, Department of Housing and Urban Development, Room 4126, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number 202–401–7914. With the exception of the telephone number for the PIH Information Resource Center, these are not toll-free numbers. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service at 1–800–877–8339 or by visiting *http://federalrelay.us/* or *http://www.federalip.us/*.

Please note: Members of the public who are aware of other Federal statutes that require any benefit not listed in this notice to be excluded from consideration as income in these programs should submit information about the statute and the benefit program to one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. Members of the public may also submit this information to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

SUPPLEMENTARY INFORMATION: Under several HUD programs (Rent Supplement under 24 CFR 200.1303 (although loans in existence immediately before May 1, 1996, continue to be governed by 24 CFR part 215); Mortgage Insurance and Interest Reduction Payment for Rental Projects under 24 CFR part 236; Section 8 Housing Assistance programs; Public Housing programs), the definition of income excludes amounts of other benefits specifically excluded by federal

law. This notice updates the list of federally mandated exclusions last published on April 20, 2001 (66 FR . 20318) to include the following:

(1) Assistance from the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771);

(2) payments from the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f);

(3) payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts;

(4) compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation in programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs; and

(5) a lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.*

Background

In certain HUD-subsidized housing programs, annual income is a factor in determining eligibility and the level of benefits. Annual income is broadly defined as the anticipated total income from all sources received by every family member. HUD excludes certain types of benefits from applicants' and participants' annual income, as listed in 24 CFR 5.609, this notice, or otherwise specified by statute or regulation.

Federal statutes that require certain income sources be disregarded as income are universally applicable to all HUD programs where income is a factor in determining eligibility and benefits. Other federal statutes specify that income exclusions are specific to certain HUD programs, and are applicable only to the particular HUD program referenced.

Changes to the Previously Published List

Exclusions Amended: Exclusion (viii) in the updated list below has been clarified to describe its applicability to Section 8 programs.

Exclusions Removed: Certain exclusions from the previously published list have been removed because they have been repealed by Congress. These exclusions are as follows:

1. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)). When the Workforce Investment Act was enacted in 1998, it simultaneously repealed the Job Training Partnership Act. The exclusion that still applies to HUD programs is listed as exclusion (xvii) in the updated list below.

2. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran. This exclusion was repealed by Public Law 106–419 in 2000.

Exclusions Added: The exclusions that are being added to the previously published list are as follows:

1. Section 1780 of the School Lunch Act and the Child Nutrition Act of 1966, provides:

> The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or state laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from state and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this Act.

The effective date of this provision was October 11, 1966. This exclusion is added to the list as paragraph (xviii).

2. Section 8 of the Seneca Nation Settlement Act of 1990, provides:

> None of the payments, funds or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying, or reducing funds under any Federal program.

The effective date of this provision was November 3, 1990. This exclusion is added to the list as paragraph (xix).

3. Section 2608 of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 4501), amended the definition of annual income in the United States. Housing Act of 1937 (42 U.S.C. 1437) to exclude payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts. The law provides:

> Section 3(b)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437a(3)(b)(4)) is amended by inserting "or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts" before "may not be considered."

This exclusion is applicable only to the Section 8 and Public Housing programs. The effective date of this provision was July 30, 2008. This exclusion is added to the list as paragraph (xx).

4. The Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269, approved October 10, 2010), amended the definition of income contained in the Native NAHASDA applicable to programs authorized under NAHASDA and administered by the Office of Native American Programs to exclude compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation. The law provides:

> Paragraph (9) of section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(9)) is amended by adding at the end the following new subparagraph: "(C) Any amounts received by any member of the family as disability compensation under chapter 11 of title 38, United States Code, or dependency and indemnity compensation under chapter 13 of such title."

This exclusion only applies to the programs authorized under NAHASDA. The effective date of this provision was October 12, 2010. This exclusion is added to the list as paragraph (xxi).

5. The Claims Resolution Act of 2010 (Pub. L. 111–291, approved December 8, 2010), excludes a lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.* The law provides:

> Notwithstanding any other provision of law, for purposes of determining initial eligibility, ongoing eligibility, or level of benefits under any Federal or federally assisted program, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be treated for any household member, during the 1-year period beginning on the date of receipt—
>
> (A) As income for the month during which the amounts were received; or
>
> (B) as a resource.

The effective date of this provision was December 8, 2010. This exclusion is added to the list as paragraph (xxii).

Updated List of Federally Mandated Exclusions From Income

The following updated list of federally mandated exclusions supersedes that notice published in the **Federal Register** on April 20, 2001. The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion in either any federal program or in specific federal programs. Exclusions (viii) and (xxi) have provisions that apply only to specific HUD programs.

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

(iii) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–04);

(vii) The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407–8);

(viii) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–247);

(ix) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange liability litigation, M.D.L. No. 381 (E.D.N.Y.) (Pub. L. 101–201 and 101–39);

(xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law 96–420, 25 U.S.C. 1721) pursuant to 25 U.S.C. 1728(c);

(xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(l));

(xiv) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95–433);

(xv) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

(xvi) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

(xvii) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);

(xviii) Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xix) Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xx) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437) by Section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 42 U.S.C. 4501);

(xxi) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) and administered by the Office of Native American Programs; and

(xxii) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al.* v. *Ken Salazar et al.*, United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291).

Dated: July 17, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2012–18056 Filed 7–23–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N161; FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Marion County Utilities, Marion County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from Marion County Utilities (applicant), for a 10-year incidental take permit (ITP; # TE79178A–0) under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), 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 August 23, 2012.

ADDRESSES: If you wish to review the application and HCP, you may request documents by email, U.S. 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.

Email: northflorida@fws.gov. Use "Attn: Permit number TE79178A–0" as your message subject line.

Fax: David L. Hankla, Field Supervisor, (904) 731–3045, Attn.: Permit number TE79178A–0.

U.S. mail: David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE79178A–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 M. Gawera, telephone: 904–731–3121; email: *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 part 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 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 is requesting take of approximately 2.26 acres (ac) of Florida scrub-jay (*Aphelocoma coerulescens*)—occupied habitat incidental to construction of an expansion to an existing water plant facility. The 6.5-ac project is located on a 14.6-ac property (parcel #8001–0000–19), within Section 15, Township 17 South, Range 21 East, Marion County, Florida. The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the Florida scrub-jay.

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). 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 HCP and comments we receive to determine whether the ITP 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 ITP. We will also evaluate whether 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. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, 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, email 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: July 13, 2012.

David L. Hankla,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2012–17988 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2012–N043: FF08E00000–FXES11120800000F2–123–F2]

Draft Environmental Assessment and Proposed Habitat Conservation Plan for the San Diego Unified School District's Jonas Salk Elementary School Project in the City of San Diego, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have prepared a draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) for the proposed Jonas Salk Elementary School Project in response to an application from the San Diego Unified School District (District or applicant) for a 10-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for "take" of one federally listed animal, the San Diego fairy shrimp (*Branchinecta sandiegonensis*). The applicant would implement a conservation program to mitigate the project impacts, as described in the applicant's habitat conservation plan (plan). We request data, comments, and new information or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the applicant's permit application, plan, and the associated EA.

DATES: To ensure consideration, please send your written comments by September 24, 2012.

ADDRESSES: Please send your comments or requests for more information by any one of the following methods.

Email: FW8cfwocomments@fws.gov. Include "Jonas Salk Elementary School" in the subject line of the message.

Fax: Attn: Jim Bartel, Field Supervisor, (760) 431–5902.

U.S. Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, at the address shown above or at (760) 431–9440 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We, the Service, publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act). We have prepared this EA to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the implementation of the supporting proposed plan.

The applicant has submitted a habitat conservation plan as part of their application for an ITP under section 10(a)(1)(B) of the Act. The plan includes measures to minimize and mitigate the impacts, to the maximum extent practicable, of the proposed taking of a federally listed species to be covered by the plan, the San Diego fairy shrimp, and the habitat upon which it depends, resulting from construction of the proposed Jonas Salk Elementary School Project in the City of San Diego (City), San Diego County, California.

Background Information

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term "harm" is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term "harass" is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks incidental take authorization for the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*), which is the only proposed covered species in the plan.

The proposed covered activities under this plan include: (1) Construction of an elementary school, park, and joint-use facilities on the 13.1-acre project site; and (2) restoration and enhancement of vernal pools occupied by San Diego fairy shrimp on the McAuliffe Park and Carroll Canyon Mitigation Sites owned by the City (collectively referred to as the Mitigation Sites). These three sites are located within the Mira Mesa Community in the north-central portion of the City.

The project site is bound by residences on the north, east, and southeast; Rattlesnake Canyon on the south and southwest; and Maddox Park on the west. The project site has been identified as a potential school site on the Mira Mesa Community Land Use Plan Map and "Recommended School Facilities" Map since 1992. The District has determined that this site would provide the best location for a new elementary school to alleviate school overcrowding in the Mira Mesa attendance area.

The McAuliffe Park Mitigation Site is approximately 0.3 mile to the north of the project site and is bound by residences on the east, Challenger Middle School on the north, and Lopez Canyon on the west and south. The McAuliffe Park Mitigation Site is fenced along the interface with the residences and school and owned by the City. The District and City have entered into a Memorandum of Understanding (MOU) that allows the District to use the McAuliffe Park Mitigation Site in exchange for additional park land and public facilities at the project site. Under the MOU, ownership of the McAuliffe Park Site would be transferred from the City to the District.

The Carroll Canyon Mitigation Site is approximately 0.5 mile to the south of the project site and is within the larger 19.1-acre Carroll Canyon Preserve. The site is bound by residences on the north, the Carroll Canyon Preserve on the east and south, and aggregate mining operations on the west. The entire Carroll Canyon Preserve, including the mitigation site, is fenced and owned by the City.

The District and City are negotiating on a Right of Entry Permit that allows the District to use the Carroll Canyon Mitigation Site. At this time, the Carroll Canyon Mitigation Site appears to be a viable mitigation option for the District. If the District is unable to negotiate a Right of Entry Permit with the City for use of the Carroll Canyon Mitigation Site, the District would be required to pursue other options acceptable to and approved by the Service.

The District proposes to develop the Jonas Salk Elementary School, park, and joint use facilities on the project site. The park and joint-use facilities would be constructed, owned, and maintained by the City in accordance with the MOU.

The proposed project would permanently remove all San Diego fairy shrimp and its vernal pool habitat from the project site. To mitigate impacts to the San Diego fairy shrimp and its vernal pool habitat, the applicant would preserve, restore, enhance, monitor, and manage vernal pool habitat for the San Diego fairy shrimp on the Mitigation Sites.

Alternatives in the Draft Environmental Assessment

The impacts of the proposed action are compared to the no-action alternative and to the impacts of a reduced vernal pool impact alternative in the draft EA.

Proposed Alternative

The Proposed Alternative, the proposed HCP, would encompass a site area of 13.1 acres. This alternative would allow: (1) Construction of an elementary school that is in compliance with all applicable California Department of Education School Development Guidelines (guidelines); (2) construction of a park and public facilities according to an MOU between the District and City; and (3) the restoration, enhancement, preservation, and/or management of San Diego fairy shrimp habitat at the Mitigation Sites. The HCP's overall conservation strategy for the San Diego fairy shrimp is to allow impacts to degraded vernal pools with low long-term conservation value at the project site in exchange for conservation of higher quality vernal pools at the mitigation sites in

perpetuity to aid the recovery of the species.

The Proposed Alternative would result in permanent impacts to all 1.66 acres of San Diego fairy shrimp vernal pool habitat (i.e., all 99 pools) on the project site. The applicant proposes to mitigate impacts to San Diego fairy shrimp and its vernal pool habitat at a 2:1 ratio by restoration, enhancement, and preservation of 3.32 acres of vernal pools: a total of 2.62 acres would occur at the McAuliffe Park Mitigation Site, and 0.7 acre would occur at the Carroll Canyon Mitigation Site. All restored pools would be occupied by the San Diego fairy shrimp. The applicant would record a perpetual biological conservation easement over, and implement a perpetual management and monitoring plan for, the Mitigation Sites.

Under the Proposed Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above. These activities are described in detail in the plan.

Reduced Vernal Pool Impact Alternative

Under the Reduced Vernal Pool Impact Alternative, the project would avoid and minimize impacts to the San Diego fairy shrimp and its vernal pool habitat by reducing the site area to 8.83 acres. This alternative would not comply with state guidelines for school site area, turf fields, or hardcourt play area, and only minimally comply with the guidelines for classrooms, support facilities, site circulation, and fire access.

The Reduced Vernal Pool Impact Alternative would result in permanent impacts to 0.72 acre of San Diego fairy shrimp vernal pool habitat on the project site. The applicant would mitigate impacts to San Diego fairy shrimp and its vernal pool habitat at a 2:1 ratio by enhancing and preserving 0.94 acre of vernal pools on the project site and restoring 0.5 acre of vernal pools on the project site and/or at the McAuliffe Park Mitigation Site. All restored pools would be occupied by the San Diego fairy shrimp. The applicant would record a perpetual biological conservation easement over, and implement a perpetual management and monitoring plan for, the project site and/or McAuliffe Park Mitigation Site. While this alternative would avoid some of the San Diego fairy shrimp habitat onsite, the avoided habitat would be surrounded by the adjoining school and park and have a minimal connection with natural open space. Therefore, the avoided habitat would be subject to fragmentation and indirect impacts that would limit the long-term viability of the San Diego fairy shrimp population onsite.

The Reduced Vernal Pool Impact Alternative would also require issuance of an incidental take permit.

No Action Alternative

Under the No Action alternative, we would not issue a permit, and the applicant would not construct the project. The no-action alternative would not achieve the applicant's objectives and would not allow the development of the project on a District property that is identified as a potential school site on the Mira Mesa Community Land Use Plan Map and "Recommended School Facilities" Map. Under the No Action Alternative, the project site would continue to be subject to impacts from pedestrian, pet and bicycle traffic, which may eventually lead to the extirpation of San Diego fairy shrimp at the site. In addition, no mitigation lands would be restored, enhanced, monitored and managed for the permanent conservation of San Diego fairy shrimp under the no-action alternative.

Environmental Review and Next Steps

As described in our EA, we have made the preliminary determination that approval of the proposed plan and issuance of the permit will not result in any significant impacts to the environment and warrants a Finding of No Significant Impact (FONSI) under NEPA (42 U.S.C. 4321 *et seq.*), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EA articulates the project's effects on all potential resources that could be adversely affected, including vegetation, wildlife, threatened or endangered species, wetlands, geology and soils, land use, air quality, water resources and water quality, cultural resources, paleontological resources, and traffic and transportation. It also includes an analysis of alternatives and cumulative effects.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on the plan and the draft EA. We particularly seek comments on any environmental issues of concern to the public that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

We will consider public comments on the draft EA when making the final determination on whether to prepare additional NEPA documents on the proposed action and in making a decision whether to issue an incidental take permit.

Public Availability of Comments

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

Availability of Documents

You may obtain copies of the permit application, plan, and EA from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Documents are also available at the following City Libraries: (1) Mira Mesa Library, 8405 New Salem Street, 92126; (2) Scripps Ranch Library, 10301 Scripps Lake Drive, 92131; (3) Rancho Penasquitos Library, 13330 Salmon River Road, 92129; and (4) North University Community Branch Library 8820 Judicial Drive, 92122.

Authority

We provide this notice pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the San Diego fairy shrimp from the implementation of the covered activities described in the plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2012–17962 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Tribal Self-Governance Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Tribal Self-Governance Program authorized by OMB Control Number 1076–0143. This information collection expires November 30, 2012.

DATES: Submit comments on or before September 24, 2012.

ADDRESSES: You may submit comments on the information collection to Sharee M. Freeman, Director, Office of Self-Governance, 1951 Constitution Avenue NW., Mail Stop 355–G SIB, Washington, DC 20240; telephone: (202) 219–0240, email: *Sharee.Freeman@BIA.gov.*

FOR FURTHER INFORMATION CONTACT: Sharee Freeman, (202) 219–0240.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Assistant Secretary—Indian Affairs is seeking comments on the information collection entitled "Tribal Self-Governance Program, 25 CFR 1000," as we prepare to renew these collections that are required by the Paperwork Reduction Act of 1995. The information collected will be used to establish requirements for entry into the pool of qualified applicants for Self-Governance and to meet reporting requirements of the Tribal Self-Governance Act.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable 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. Data

OMB Control Number: 1076–0143.

Title: Tribal Self-Governance program, 25 CFR 1000.

Brief Description of Collection: The Self-Governance program is authorized by the Tribal Self-Governance Act of 1994, Public Law 103–413 (the Act), as amended. Indian tribes interested in entering into Self-Governance must submit certain information as required by the Act. In addition, those tribes and tribal consortia that have entered into Self-Governance funding agreements will be requested to submit certain information as described in 25 CFR part 1000. This information will be used to justify a budget request submission on their behalf and to comport with section 405 of the Act that calls for the Secretary to submit an annual report to the Congress. Responses are required to obtain or retain a benefit or are voluntary, depending upon the part of the program being addressed.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes and tribal consortia participating or wishing to enter into Tribal Self-Governance.

Number of Respondents: 289.

Number of Responses: 204.

Estimated Time per Response: Completion times vary from 15 minutes to 400 hours, with an average of approximately 55 hours.

Frequency of Response: On occasion or annually.

Estimated Total Annual Hour Burden: 11,203 hours.

Estimated Total Annual Cost: $10,500.

Dated: July 13, 2012.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2012–17951 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) and subcommittee for the proposed Monument and Cassia Land Use Plan amendments will meet as indicated below.

DATES: On August 16, 2012, the Twin Falls District RAC subcommittee members for the proposed Monument and Cassia Land Use Plan amendments will meet at the Rock Creek Fire Station, 1559 Main Street North, Kimberly, Idaho. The meeting will begin at 6:00 p.m. and end no later than 9:00 p.m. The public comment period for the RAC subcommittee meeting will take place 6:10 p.m. to 6:40 p.m. On September 20, the Twin Falls District Resource Advisory Council will meet in Twin Falls at the Sawtooth Best Western Inn, 2653 South Lincoln Ave., Jerome, Idaho. The meeting will begin at 9:00 a.m., and end no later than 4:30 p.m. The public comment period will take place from 9:10 a.m. to 9:40 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho, 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the August 16th meeting, RAC subcommittee members will discuss rock climbing, camping, staging, trail-building and other recreational issues at Cedar Fields and Castle Rocks. During the September 20th meeting, RAC subcommittee members will report to the full RAC with their recommendations regarding a proposed alternative addressing those issues at Cedar Fields. RAC members will also hear a 2012 fire season update as well as field manager reports.

Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html* RAC meetings are open to the public.

Dated: July 13, 2012.

Jenifer Arnold,

District Manager (Acting).

[FR Doc. 2012–17992 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–BSD–10878; 2410–OYC]

Proposed Information Collection; Request for Comments: Submission of Offers in Response to Concession Opportunities

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. This IC is scheduled to expire on March 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before September 24, 2012.

ADDRESSES: Please send your comments on the IC to Madonna Baucum, Information Collection Clearance Officer, National Park Service, 1201 Eye St. NW., MS 1242, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (email). Please reference "1024–0125, Submission of Offers in Response to Concession Opportunities" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, 1201 Eye St. NW., Washington, DC 20005. You may send an email to *jo_pendry@nps.gov* or contact her by telephone at (202) 513–7156 or via fax at (202) 371–2090.

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations at 36 CFR Part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides legislative authority, policies and requirements for the solicitation, award and administration of National Park Service (NPS) concession contracts. The regulations require the submission of offers by parties interested in applying for a NPS concession contract.

II. Data

OMB Control Number: 1024–0125.

Title: Submission of Offers in Response to Concession Opportunities, 36 CFR 51.

Form(s): None.

Type of Request: Extension of a previously approved collection of information.

Description of Respondents: Businesses, individuals, and nonprofit organizations.

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

Frequency of Collection: On Occasion.

Estimated Number of Annual Respondents: 240.

Completion Time per Response: 320 hours.

Estimated Total Annual Burden Hours: 76,800.

Estimated Annual Nonhour Burden Cost: $1,120,000.

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 18, 2012.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2012–17977 Filed 7–23–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–10735; 2200–3200–665]

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 June 23, 2012. Pursuant to section 60.13 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 August 8, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 29, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Sacramento County

Ashland Depot, 815 Leidesdorff St., Folsom, 12000471

KANSAS

Kingman County

Linwood Presbyterian Church and Home for Convalescent Employed Women, 1801 Linwood Blvd., & 3212 Michigan Ave., Kansas City, 12000472

MISSOURI

Jasper County

Joplin Furniture Company Building, (Historic Resources of Joplin, Missouri) 702–708 Main St., Joplin, 12000473

St. Louis County

North Taylor Avenue Historic District, (Kirkwood MPS) Roughly bounded by Manchester Rd., E. Adams, & N. Taylor Aves., Kirkwood, 12000474

NEW YORK

Erie County

American Grain Complex, (Buffalo Grain and Materials Elevator MPS) 87 Childs St., Buffalo, 12000475

Buffalo Meter Company Building, 2917 Main St., Buffalo, 12000476

Essex County

VERGENNES (canal boat), Address Restricted, Westport, 12000477

Herkimer County

Big Moose Community Chapel, 1544 Big Moose Rd., Eagle Bay, 12000478

Kings County

Wallabout Industrial Historic District, Clinton, Flushing, Grand, Park, Washington, & Waverly Aves., Hall, & Ryerson Sts., Brooklyn, 12000479

Onondaga County

St. Patrick's Church Complex, 216 N. Lowell Ave., Syracuse, 12000480

Schoharie County

First Presbyterian Church of Jefferson, Creamery St. at Park Ave., Jefferson, 12000481

Tioga County

Beecher, James C., House, 560 5th Ave., Owego, 12000482

OREGON

Coos County

Marshfield I.O.O.F. Cemetery, 750 Ingersoll Rd., Coos Bay, 12000483

Morrow County

Hardman I.O.O.F. Lodge Hall, 51186 OR 207, Hardman, 12000484

SOUTH DAKOTA

Hughes County

Pringle House, 102 N. Jefferson, Pierre, 12000485

Jones County

Weigandt Barn, 27285 Silver Valley Rd., Murdo, 12000486

Pennington County

Chapel in the Hills, 3788 Chapel Ln., Rapid City, 12000487

Golden Summit Mine Foreman's Cabin, 24085 Palmer Gulch Rd., Hill City, 12000488

TENNESSEE

Overton County

American Legion Bohannon Post #4, 121 S. Church St., Livingston, 12000489

WISCONSIN

Walworth County

Elkhorn Band Shell, Sunset Park, bounded by Devendorf, W. Centralia, & Park Sts., Elkhorn, 12000490

Elkhorn Municipal Building, 9 S. Broad St., Elkhorn, 12000491

A request for removal has been made for the following property:

SOUTH DAKOTA

Coddington County

Appleby Atlas Elevator, 6 mi. S of jct. of US 212 and I 29, Watertown, 90000957

[FR Doc. 2012–17971 Filed 7–23–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management (BOEM)

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 229 in the Western Planning Area (WPA) in the Gulf of Mexico

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of Availability of the Proposed Notice of Sale for Proposed Sale 229.

SUMMARY: BOEM announces the availability of the Proposed Notice of Sale (NOS) for proposed Sale 229 in the WPA. This sale will be the first under the Proposed Final OCS Oil and Gas Leasing Program for 2012–2012. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected states the opportunity to review the proposed NOS. The proposed NOS sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Affected states may comment on the size, timing, and location of proposed Sale 229 within 60 days following their receipt of the proposed NOS. The final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for November 28, 2012.

SUPPLEMENTARY INFORMATION: This Notice is published pursuant to 30 CFR 556.29(c) as a matter of information to the public. The proposed NOS for Sale 229 and a "Proposed Notice of Sale Package" containing essential information for potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Agency Contact: Donna Dixon, Leasing Division Chief, *Donna.Dixon@boem.gov*.

Dated: July 13, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–17965 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0021]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1012–0002).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR parts 1202, 1206, and 1207. This notice also provides the public with a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments on or before August 23, 2012.

ADDRESSES: Submit written comments by either FAX (202) 395–5806 or email (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1012–0002).

You may submit a copy of your comments to ONRR by one of the following methods (please use "ICR 1012–0002" as an identifier in your comments):

- Electronically, go to *http://www.regulations.gov*. In the "Search" box, enter "ONRR–2011–0021," then click "Search." Follow the instructions

to submit public comments. ONRR will post all comments.

- Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64000A, Denver, Colorado 80225–0165.
- Hand-carry comments, or use an overnight courier service, to the Office of Natural Resources Revenue, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Armand Southall at (303) 231–3221, or email *armand.southall@onrr.gov*. You may also contact Mr. Southall to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require us to collect the information. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.

OMB Control Number: 1012–0002.

Bureau Form Number: Forms MMS–4109, MMS–4110, MMS–4295, MMS–4410, and MMS–4411.

Note: ONRR will publish a rule updating our form numbers to Forms ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4410, and ONRR–4411.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Various laws require the Secretary to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the collected funds in accordance with applicable laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral leases on Federal and Indian lands are available at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm*.

Information collections that we cover in this ICR are available at 30 CFR part 1202, subparts C and J, which pertain to royalties; part 1206, subparts B and E, which govern the valuation of produced oil and gas from leases on Indian lands; and part 1207, which pertains to recordkeeping. Indian Tribes and individual Indian mineral owners receive all royalties that generate from their lands. Determining product valuation is essential to ensure that Indian Tribes and individual Indian mineral owners receive payment on the full value of the minerals that lessees remove from their lands. Failure to collect the data that we describe in this ICR could result in the undervaluation of leased minerals on Indian lands. All reported data is subject to subsequent audit and adjustment.

Indian Oil

Regulations at 30 CFR part 1206, subpart B, govern the valuation, for royalty purposes, of all oil that Indian oil and gas leases (tribal and allotted) produce, except leases on the Osage Indian Reservation, and are consistent with mineral leasing laws, other applicable laws, and lease terms. Generally, the regulations provide that lessees determine the value of oil based upon the higher of (1) the gross proceeds under an arm's-length contract; or (2) major portion analysis. The value that a lessee determines may be eligible for a transportation allowance.

From information collected on Form MMS–4110, Oil Transportation Allowance Report, ONRR and tribal audit personnel evaluate (1) whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated in accordance with applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.

Indian Gas

Regulations at 30 CFR part 1206, subpart E, govern the valuation, for royalty purposes, of natural gas that Indian oil and gas leases (tribal and allotted) produce. The regulations apply to all gas production from Indian oil and gas leases, except leases on the Osage Indian Reservation.

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for produced gas from the lease. Lessees must elect to perform actual dual accounting, as we define in 30 CFR 1206.176, or alternative dual accounting, as we define in 30 CFR 1206.173. Lessees use Form MMS–4410, Accounting for Comparison [Dual Accounting], to certify that dual accounting is not an ONRR requirement on an Indian lease or to make an election for actual or alternative dual accounting for Indian leases.

The regulations require lessees to submit Form MMS–4411, Safety Net Report, when they sell gas production from an Indian oil or gas lease beyond the first index pricing point. The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids ONRR compliance efforts.

From information collected on Form MMS–4295, Gas Transportation Allowance Report, ONRR and tribal audit personnel evaluate (1) whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated in accordance with applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.

From information collected on Form MMS–4109, Gas Processing Allowance Summary Report, ONRR and tribal audit personnel evaluate (1) whether lessee-reported processing allowances are within regulatory allowance limitations and calculated in accordance with applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalty.

Indian Oil and Gas

Lessees must use Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, for both Federal and Indian leases. Most of the burden hours occur on Federal leases; therefore, this is an ONRR-approved form under ICR 1012–0005, pertaining to Federal oil and gas leases. However, we include a discussion of the form in this ICR, as well as the burden hours for Indian leases. To request permission to exceed a regulatory allowance limit, lessees must (1) submit a letter to ONRR explaining why a higher allowance limit is necessary; and (2) provide supporting documentation, including a completed Form MMS–4393. This form provides ONRR with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports.

Summary

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value to Indian Tribes and individual Indian mineral owners. ONRR protects proprietary information that it receives and does not collect items of a sensitive nature. The requirement to report is mandatory for Form MMS–4410, Accounting for Comparison [Dual Accounting], and for Form MMS–4411, Safety Net Report, under certain circumstances. For all other forms in this collection, the

requirement to report is mandatory in order to obtain a benefit.

Frequency of Response: Annually and on occasion.

Estimated Number and Description of Respondents: 148 Indian lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 2,269 hours.

We have not included in our estimates certain requirements that occur in the normal course of business and that we consider usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 1202—ROYALTIES				
Subpart C—Federal and Indian Oil				
1202.101	Standards for reporting and paying royalties Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F * * *.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
Subpart J—Gas Production From Indian Leases				
1202.551(b)	How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)? (b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes * * *.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1202.551(c)	(c) You and all other persons paying royalties on the lease may ask ONRR for permission * * * to report entitlements * * *.	1	1	1
1202.558(a) and (b)	What standards do I use to report and pay royalties on gas? (a) You must report gas volumes as follows: (b) You must report residue gas and gas plant product volumes as follows:	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
Part 1206—PRODUCT VALUATION				
Subpart B—Indian Oil				
1206.56(b)(2)	Transportation allowances—general. (b)(2) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination * * *.	4	1	4
1206.57(a)(1)(i)	Determination of transportation allowances (a) *Arm's-length transportation contracts* (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
1206.57(a)(1)(i)	(a) *Arm's-length transportation contracts* (1)(i) * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report * * *.	Burden covered under § 1206.57(c)(1)(i) and (iii).		
1206.57(a)(1)(iii)	(a) *Arm's-length transportation contracts* (1)(iii) * * * When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.57(a)(2)(i)	(a) *Arm's-length transportation contracts* (2)(i) * * * Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without ONRR approval.	Burden covered under § 1206.57(a)(3).		
1206.57(a)(2)(ii)	(a) *Arm's-length transportation contracts* (2)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported * * *.	20	1	20
1206.57(a)(3)	(a) *Arm's-length transportation contracts* (3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. * * * The lessee shall submit all available data to support its proposal * * *.	40	1	40
1206.57(b)(1)	(b) *Non-arm's-length or no contract* (1) * * * A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee * * *.	Burden covered under § 1206.57(c)(2)(i) and (iii).		
1206.57(b)(1)	(b) *Non-arm's-length or no contract* (1) * * * When necessary or appropriate, ONRR may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.57(b)(2)(iv)	(b) *Non-arm's-length or no contract* (2)(iv) * * * After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of ONRR.	20	1	20
1206.57(b)(2)(iv)(A)	(b) *Non-arm's-length or no contract* (2)(iv)(A) * * * After an election is made, the lessee may not change methods without ONRR approval * * *.	20	1	20
1206.57(b)(3)(i)	(b) *Non-arm's-length or no contract* (3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty bearing without ONRR approval.	40	1	40
1206.57(b)(3)(ii)	(b) *Non-arm's-length or no contract* (3)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported * * *.	20	1	20
1206.57(b)(4)	(b) *Non-arm's-length or no contract* (4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR. The lessee shall submit all available data to support its proposal * * *.	20	1	20
1206.57(b)(5)	(b) *Non-arm's-length or no contract* (5) A lessee may apply to ONRR for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section * * *.	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.57(c)(1)(i)	(c) *Reporting requirements* ... (1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance * * *.	4	1	4
1206.57(c)(1)(iii)	(c) *Reporting requirements* ... (1) *Arm's-length contracts.* (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	4	1	4
1206.57(c)(1)(iv)	(c) *Reporting requirements* ... (1) *Arm's-length contracts.* (iv) ONRR may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.	AUDIT PROCESS. See note.		
1206.57(c)(2)(i)	(c) *Reporting requirements* ... (2) *Non-arm's-length or no contract* ... (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. * * * The initial report may be based upon estimated costs.	6	1	6
1206.57(c)(2)(iii)	(c) *Reporting requirements* ... (2) *Non-arm's-length or no contract.* (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. * * * ONRR must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	6	1	6
1206.57(c)(2)(iv)	(c) *Reporting requirements* ... (2) *Non-arm's-length or no contract.* (iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period * * *.	Burden covered under § 1206.57(c)(2)(i).		
1206.57(c)(2)(v)	(c) *Reporting requirements* ... (2) *Non-arm's-length or no contract.* (v) * * * only those allowances that have been approved by ONRR in writing * * *.	Burden covered under § 1206.57(c)(2)(i).		
1206.57(c)(2)(vi)	(c) *Reporting requirements* ... (2) *Non-arm's-length or no contract.*	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(vi) Upon request by ONRR, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by ONRR..			
1206.57(c)(4) and (e)(2)	(c) *Reporting requirements* ..... (4) Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *. (e) *Adjustments.* (2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs * * *.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.59	May I ask ONRR for valuation guidance? ..... You may ask ONRR for guidance in determining value. You may propose a value method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary * * *.	20	1	20
1206.61(a) and (b)	What records must I keep and produce? ..... (a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the field or area. You must make this data available to ONRR, Indian representatives, or other authorized persons. (b) You must retain all data relevant to the determination of royalty value * * *.	AUDIT PROCESS. See note.		
	PART 1206—PRODUCT VALUATION Subpart E—Indian Gas			
1206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone?. (b) *Valuing residue gas and gas before processing.* (1)(ii) Gas production that you certify on Form MMS–4410, * * * is not processed before it flows into a pipeline with an index but which may be processed later; * * *	4	58	232
1206.172(e)(6)(i) and (iii)	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (6)(i) You must report the safety net price for each index zone to ONRR on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year * * *. (iii) ONRR may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later * * *.	3	11	33
1206.172(e)(6)(ii)	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (6)(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year * * *.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.172(f)(1)(ii), (f)(2), and (f)(3).	(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask ONRR to exclude some or all of its leases from valuation under this section * * *. (ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, ONRR will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. (2) An Indian tribe may ask ONRR S to terminate exclusion of its leases from valuation under this section * * *. (3) The Indian tribe's request to ONRR under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution * * *.	40	1	40
1206.173(a)(1)	How do I calculate the alternative methodology for dual accounting?	2	12	24

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(a) *Electing a dual accounting method* ..... (1) * * * You may elect to perform the dual accounting calculation according to either § 1206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).			
1206.173(a)(2)	(a) *Electing a dual accounting method* ..... (2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each ONRR S-designated area * * *.	Burden covered under § 1206.173(a)(1).		
1206.174(a)(4)(ii)	How do I value gas production when an index-based method cannot be used?. (a) *Situations in which an index-based method cannot be used.* (4)(ii) If the major portion value is higher, you must submit an amended Form MMS–2014 to ONRR by the due date specified in the written notice from ONRR of the major portion value * * *.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.174(b)(1)(i) and (iii); (b)(2); (d)(2).	(b) *Arm's-length contracts* ..... (1)(i) You have the burden of demonstrating that your contract is arm's-length * * *. (iii) * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your value * * *. (2) ONRR may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product. (d) *Supporting data* ..... (2) You must make all such data available upon request to the authorized ONRR or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons * * *.	AUDIT PROCESS. See note.		
1206.174(d)	(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to determination of royalty value.	Burden covered under OMB Control Number 1012–0004.		
1206.174(f)	(f) *Value guidance.* You may ask ONRR for guidance in determining value. You may propose a valuation method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary * * *.	40	1	40
1206.175(d)(4)	How do I determine quantities and qualities of production for computing royalties?. (d)(4) You may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease * * *.	20	1	20
1206.176(b)	How do I perform accounting for comparison? ..... (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 1206.173 instead of the provisions in paragraph (a) of this section.	Burden covered under § 1206.173(a)(1).		
1206.176(c)	(c) * * * If you do not perform dual accounting, you must certify to ONRR that gas flows into such a pipeline before it is processed.	Burden covered under § 1206.172(b)(1)(ii).		
	Transportation Allowances			
1206.177(c)(2) and (c)(3)	What general requirements regarding transportation allowances apply to me?. (c)(2) If you ask ONRR, ONRR may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section * * *.	Burden covered under § 1206.56(b)(2).		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(3) Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.			
1206.178(a)(1)(i)	How do I determine a transportation allowance? (a) *Determining a transportation allowance under an arm's-length contract.* (1)(i) * * * You are required to submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your report which claims the allowance on the Form MMS–2014.	1	18	18
1206.178(a)(1)(iii)	(a) *Determining a transportation allowance under an arm's-length contract.* (1)(iii) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.	AUDIT PROCESS. See note.		
1206.178(a)(2)(i) and (ii)	(a) *Determining a transportation allowance under an arm's-length contract.* (2)(i) * * * you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without ONRR approval, or without lessor approval on tribal leases. (ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported * * *.	20	1	20
1206.178(a)(3)(i) and (ii)	(a) *Determining a transportation allowance under an arm's-length contract.* (3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to ONRR * * *. (ii) You are required to submit all relevant data to support your allocation proposal * * *.	40	1	40
1206.178(b)(1)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to ONRR on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies * * *.	15	5	75
1206.178(b)(2)(iv)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (2)(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without ONRR approval.	20	1	20
1206.178(b)(2)(iv)(A)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (2)(iv)(A) * * * Once you make an election, you may not change methods without ONRR approval * * *.	20	1	20
1206.178(b)(3)(i)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.*	40	1	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(3)(i) * * * Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without ONRR approval.			
1206.178(b)(3)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (3)(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported * * *.	20	1	20
1206.178(b)(5)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. * * * You are required to submit all relevant data to support your proposal * * *.	40	1	40
1206.178(d)(1)	(d) *Reporting your transportation allowance.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance * * *.	AUDIT PROCESS. See note.		
1206.178(d)(2), (e), and (f)(1)	(d) *Reporting your transportation allowance.* (2) You must report transportation allowances as a separate entry on Form MMS–2014 * * *. (e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 1218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due * * *. (f) *Determining allowable costs for transportation allowances* * * *. (1) *Firm demand charges paid to pipelines* * * *. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
	Processing Allowances			
1206.180(a)(1)(i)	How do I determine an actual processing allowance? (a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(i) * * * You have the burden of demonstrating that your contract is arm's-length. You are required to submit to ONRR a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your first report that deducts the allowance on the Form MMS–2014.	1	2	2
1206.180(a)(1)(iii)	(a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(iii) If ONRR determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties * * *. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your processing costs.	AUDIT PROCESS. See note.		
1206.180(a)(3)	(a) *Determining a processing allowance if you have an arm's-length processing contract.*	40	1	40

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR. * * * You are required to submit all relevant data to support your proposal * * *.			
1206.180(b)(1)(ii)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to ONRR on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies * * *.	100	12	1,200
1206.180(b)(2)(iv)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (2)(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without ONRR approval.	20	1	20
1206.180(b)(2)(iv)(A)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (2)(iv)(A) * * * Once you make an election, you may not change methods without ONRR approval * * *.	20	1	20
1206.180(b)(3)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.	20	1	20
1206.180(c)(1)	(c) *Reporting your processing allowance* (1) If ONRR requests, you must submit all data used to determine your processing allowance * * *.	AUDIT PROCESS. See note.		
1206.180(c)(2) and (d)	(c) *Reporting your processing allowance* (2) You must report gas processing allowances as a separate entry on the Form MMS–2014 * * *. (d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 1218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due * * *.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.181(c)	How do I establish processing costs for dual accounting purposes when I do not process the gas? (c) A proposed comparable processing fee submitted to either the tribe and ONRR (for tribal leases) or ONRR (for allotted leases) with your supporting documentation submitted to ONRR. If ONRR does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the ONRR Director under 30 CFR part 1290.	40	1	40
PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS Subpart A—General Provisions				
1207.4(b)	Contracts made pursuant to old form leases (b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows * * *.	AUDIT PROCESS. See note.		
1207.5	Contract and sales agreement retention	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized ONRR, State or Indian representatives, other ONRR or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to ONRR within a reasonable period of time, as determined by ONRR. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR part 1212.			
TOTAL BURDEN			148	2,269

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person does not have to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency to "* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to (a) evaluate whether the proposed collection of information is necessary in order for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information that the agency collects; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, ONRR published a notice in the **Federal Register** on December 8, 2011 (76 FR 76746), announcing that we would submit this ICR to OMB for approval. (We published an additional notice in the **Federal Register** on December 15, 2011 (76 FR 78033) correcting the response date for comments.) The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices that we listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection, but they may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 23, 2012.

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us, in your comment, to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Office of the Secretary, Information Collection Clearance Officer: Laura Dorey (202) 208–2654.

Dated: July 17, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–18079 Filed 7–23–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0184]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Reinstatement, With Change, of Previously Approved Collection for Which Approval Has Expired: School Crime Supplement (SCS) to the National Crime Victimization Survey

ACTION: 60-day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 24, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer Truman, Statistician, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 7th Street NW., Washington, DC 20531, or facsimile (202) 307–1463.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* School Crime Supplement (SCS) to the National Crime Victimization Survey.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* SCS–1. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: The survey will be administered to persons ages 12 to 18 in NCVS sampled households in the United States. The School Crime Supplement (SCS) to the National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the students' victimization, perceptions of school environment, and safety at school.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Approximately 10,006 persons ages 12 to 18 will complete an SCS interview. We estimate the average length of the SCS interview for these individuals will be 0.177 hours (10.6 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 1,773 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: July 19, 2012.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–18008 Filed 7–23–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosives

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 24, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, Chief, Explosives Industry Programs Branch at *eipb@atf.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: None.

Need for Collection

The information from the questionnaires will be used to identify the number and locations of public explosives storage facilities including those facilities used by State and local law enforcement. The information will also help ATF account for all explosive materials during emergency situations, such as hurricanes, forest fires or other disasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,000 respondents will complete the questionnaire within approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 500 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Dated: July 18, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–17910 Filed 7–23–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; YouthBuild Site Visit Protocols

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, "YouthBuild Site Visit Protocols," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995.

DATES: Submit comments on or before August 23, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The YouthBuild Program Impact Evaluation is a seven-year, experimental design evaluation, funded by the ETA and the Corporation for National and Community Service (CNCS). The YouthBuild Program is a youth and community development program that addresses several core issues facing low-income communities: youth education, employment, criminal behavior, social and emotional development, and affordable housing. The program primarily serves high school dropouts and focuses on helping them attain a high school diploma or general educational development certificate, and teaching them construction skills geared toward career placement. The YouthBuild program evaluation represents an important opportunity for the DOL and CNCS to add to the growing body of knowledge about the impacts of so-called "second chance" programs for youth who have dropped out of high school. Compared to peers who remain in school, high school dropouts are more likely to be disconnected from school and work, to be incarcerated, to be unmarried, and to have children outside of marriage. The target population for the program, and correspondingly the study, is out-of-school youth, aged 16–24, from low-income families or in foster care and who are offenders, migrants, disabled, or children of incarcerated parents.

The DOL has submitted several ICRs to the OMB for approval as part of the overall YouthBuild evaluation, because data collected through the initial stages inform the development of the subsequent data collection instruments. This particular ICR pertains only to site visit protocols. For additional information, see the related notice published in the **Federal Register** on February 8, 2012.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201202–1205–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: YouthBuild Site Visit Protocols.

OMB ICR Number: 201202–1205–002.

Affected Public: Individuals or Households and Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 396.

Total Estimated Number of Responses: 1,309.

Total Estimated Annual Burden Hours: 1,209.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 17, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–18001 Filed 7–23–12; 8:45 a.m.]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,652; TA–W–81,652A]

AISS/Sterling Infosystems a Subsidiary of Sterling Infosystems, Inc. Independence, OH; AISS/Sterling Infosystems a Subsidiary of Sterling Infosystems, Inc. Fairlawn, OH; 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 June 12, 2012, applicable to workers of AISS/Sterling Infosystems, a subsidiary of Sterling Infosystem, Inc.,

Independence, Ohio (TA–W–81,652) and AISS/Sterling Infosystems, a subsidiary of Sterling Infosystem, Inc., Fairlawn, Ohio (TA–W–81,652A). The Department's notice of determination was published in the **Federal Register** on June 28, 2012 (77 FR 38666).

At the request of a State Workforce Official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of background screening services.

The state workforce official reports that the worker group was located among two locations. One of those locations was not previously identified in the certification (TA–W–81,652). In order to properly capture the entirety of the worker group, the certification is being amended.

The amended notice applicable to TA–W–81,652 is hereby issued as follows:

"All workers of AISS/Sterling Infosystems, a subsidiary of Sterling Infosystem, Inc., Independence, Ohio (TA–W–81,652) and AISS/Sterling Infosystems, a subsidiary of Sterling Infosystem, Inc., Fairlawn, Ohio (TA–W–81,652A) who became totally or partially separated from employment on or after May 22, 2011, through June 12, 2014, 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 July 13, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–17996 Filed 7–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,547]

Joerns Healthcare, LLC, Stevens Point, Wisconsin Division, Including On-Site Leased Workers From ABR, Aerotek, and Manpower, Stevens Point, 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 May 16, 2012, applicable to workers of Joerns Healthcare, LLC, Stevens Point, Wisconsin Division, Stevens Point, Wisconsin, including on-site leased workers from ABR, Aerotek, and Manpower. The Department's notice of determination was published in the **Federal Register** on June 6, 2012 (77 FR 33493).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in steel bed frames and accessories for the medical industries.

The company reports that workers leased from Manpower were employed on-site at the Stevens Point, Wisconsin location of Joerns Healthcare, LLC, Stevens Point, Wisconsin Division, including on-site leased workers from ABR and Aerotek. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Manpower working on-site at the Stevens Point, Wisconsin location of the subject firm.

The amended notice applicable to TA–W–81,547 is hereby issued as follows:

All workers of Manpower, reporting to Joerns Healthcare, LLC, Stevens Point, Wisconsin Division, including on-site leased workers from ABR and Aerotek, Stevens Point, Wisconsin who became totally or partially separated from employment on or after April 25, 2011 through May 16, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this July 13, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–17997 Filed 7–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,151]

Navistar Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, 2911 Meyer Road, Including Leased Workers From Populous Group, Livernois Vehicle Development, ASG Renaissance, Alpha Personnel, Inc., and PPP Careers, Inc., Fort Wayne, Indiana; 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 20, 2011, applicable to workers of Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, 2911 Meyer Road, Fort Wayne, Indiana, including on-site leased workers from Populous Group, Livernois Vehicle Development, ASG Renaissance, and Alpha Rae Personnel, Inc. The Department's notice of determination was published in the **Federal Register** on November 3, 2011 (76 FR 68220).

At the request of a One-Stop Operator/Partner, the Department reviewed the certification for workers of the subject firm. The workers were engaged in engineering and technical consulting services.

The company reports that workers leased from PPP Careers, Inc. were employed on-site at the 2911 Meyer Road, Fort Wayne, Indiana location of Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from PPP Careers, Inc. working on-site at the 2911 Meyer Road, Fort Wayne, Indiana location of Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division.

The amended notice applicable to TA–W–75,151 is hereby issued as follows:

All workers of PPP Careers, Inc., reporting to Navistar International Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, 2911 Meyer Road, Fort Wayne, Indiana, who became totally or partially separated from employment on or after January 30, 2010 through October 20, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this July 13, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–17999 Filed 7–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,149]

Alumax Mill Products, Inc. Doing Business as Alcoa Mill Products Texarkana a Subsidiary of Alcoa, Inc. Nash, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 2010, applicable to workers and former workers of Alcoa Mill Products Texarkarna, a subsidiary of Alcoa, Inc., Nash, Texas. The Department's notice of determination was published in the **Federal Register** on Friday, April 23, 2010 (75 FR 21359).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of rolled aluminum sheet.

New information shows that the legal entity from which workers of Alcoa Mill Products Texarkana, a subsidiary of Alcoa, Inc., Nash, Texas, was separated is Alumax Mill Products, Inc., a subsidiary of Alcoa, Inc.

The intent of the Department's certification is to properly identify the subject firm name from which the subject workers were separated. Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–71,149 is hereby issued as follows:

All workers of Alumax Mill Products, Inc., doing business as Alcoa Mill Products Texarkana, a subsidiary of Alcoa, Inc., Nash, Texas, who became totally or partially separated from who became totally or partially separated from employment on or after June 11, 2008, 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 July 13, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–18000 Filed 7–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,638; TA–W–81,638A]

Lexisnexis, a Subsidiary of Reed Elsevier Customer Service Department and Fulfillment Department, Including On-Site Leased Workers From Manpower, Robert Half International, Corestaff Services, and Kforce Technology Including Remote Workers in New York Reporting to Miamisburg, OH; Lexisnexis, a Subsidiary of Reed Elsevier Customer Service Department and Fulfillment Department, Including On-Site Leased Workers From Manpower, Robert Half International, Corestaff Services, and Kforce Technology, Albany, NY; 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 June 1, 2012, applicable to workers of Lexisnexis, a subsidiary of Reed Elsevier, Inc., Customer Service Department and Fulfillment Department, including on-site leased workers from Manpower, Robert Half International, Corestaff Services, and Kforce Technology, including remote workers in New York reporting to Miamisburg, Ohio, Miamisburg, Ohio. The Department's notice of determination was published in the **Federal Register** on June 28, 2012 (77 FR 38665).

At the request of a state workforce official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of customer service and fulfillment services.

New information shows that some workers separated from employment at LexisNexis, Customer Service Department and Fulfillment Department with locations in Miamisburg, Ohio (TA–W–81,638) and Albany, New York (TA–W–81,638A) had their wages reported under a different subject firm name, namely Reed Elsevier which is the parent firm of LexisNexis.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in services to a foreign country that is like or directly competitive to customer service and fulfillment supplied by the workers of the subject firm.

Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–81,638 is hereby issued as follows:

All workers of LexisNexis, a subsidiary of Reed Elsevier, Customer Service Department and Fulfillment Department, including on-site leased workers from Manpower, Robert Half International, Corestaff Services and KForce Technology, including Remote Workers in New York reporting to Miamisburg, Ohio (TA–W–81,638) and LexisNexis, a subsidiary of Reed Elsevier, Customer Service Department and Fulfillment Department, including on-site leased workers from Manpower, Robert Half International, Corestaff Services, and Kforce Technology, Albany, New York (TA–W–81,638A), who became totally or partially separated from who became totally or partially separated from employment on or after May 18, 2011, through June 1, 2014, 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 July 13, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–17998 Filed 7–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory, and presents the Agency's preliminary finding to grant this request. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* Postmarked or sent by August 8, 2012.
- *Electronic transmission or facsimile:* Send by August 8, 2012.

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

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

Regular or express mail, hand delivery, or messenger (courier) service: Submit a copy of comments and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0042, Technical Data Center, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TDY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 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–2007–0042). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be available online at *http://www.regulations.gov.*

Docket: To read or download submissions or other material in the docket (e.g., exhibits listed below), 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. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of Comment Period: Submit requests for an extension of the comment period on or before August 8, 2012 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: Kevin Robinson, Electrical Engineer, 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. Our Web page includes information about the NRTL Program (see *http://www.osha.gov* and select "N" in the site index).

SUPPLEMENTARY INFORMATION:

Notice of Expansion Application

The Occupational Safety and Health Administration (OSHA) is providing notice that TUV Rheinland of North America, Inc. (TUV), applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV's expansion request covers the addition of a new site and the use of one additional test standard. OSHA's current scope of recognition for TUV is available at *http://www.osha.gov/dts/otpca/nrtl/tuv.html.*

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified by 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 an 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** when processing 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 at *http://www.osha.gov/dts/otpca/nrtl/index.html* that details each NRTL's scope of recognition. 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 product 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.

The current address of the TUV facility (site) already recognized by OSHA is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

General Background on the Application

TUV submitted an application, dated February 24, 2006 (Ex. 1: TUV Application), to expand its recognition to include one additional facility (site) located at 2324 Ridgepoint Drive, Suite E, Austin, Texas 78754, and one additional test standard. In response to OSHA's requests for clarification, TUV amended its application to provide additional technical details, and then provided further details in a later update (Ex. 2: TUV Amended Application dated 8/22/2007 and 2/10/2009). The NRTL Program staff determined that this standard is an "appropriate test standard" within the meaning of 29 CFR 1910.7(c). In connection with this request, NRTL Program assessment staff performed an on-site review of TUV's testing facility in August 2010, and recommended expansion of TUV's recognition to include the one additional facility listed above and the additional test standard

listed below (Ex. 2). As a result, the Agency preliminarily determined that it should expand TUV's scope of recognition to include the one additional facility and test standard.

Standard Requested for Recognition

TUV seeks recognition for testing and certifying products to the following test standard:[1] UL 913: Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations.

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 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 standard listed above as an American National Standard. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard instead of the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV),[2] 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.

Preliminary Finding on the Application

TUV submitted an acceptable application for recognition as an NRTL. OSHA's review of the application file, and the results of the on-site review, indicate that TUV can meet the requirements prescribed by 29 CFR 1910.7 for recognition to use the test standard and facility listed above. This preliminary finding does not constitute an interim or temporary approval of the application. TUV corrected the discrepancies noted by OSHA during the on-site review, and the on-site review report describes these corrections (Ex. 3: TUV On-site Report).

OSHA welcomes public comment as to whether TUV meets the requirements of 29 CFR 1910.7 for expansion of their recognition as an 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 publicly available information in TUV's application and other pertinent documents (including exhibits), as well as 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–2007–0042.

The NRTL Program staff will review all comments to the docket submitted in a timely manner, and, after addressing the issues raised by these comments, will recommend whether to grant TUV's application for expansion. The Assistant Secretary will make the final decision on granting the application and, in 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**.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 18, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–17995 Filed 7–23–12; 8:45 am]

BILLING CODE 4510–26–P

[1] The designation and title of this test standard was current at the time OSHA prepared this notice.

[2] Available on OSHA's Web page at *http://www.osha.gov*.

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

Amended Notice

Call-In Directions for Open Session Meetings

This is an amendment to the notice of the Legal Services Corporation ("LSC" or "Corporation") Board of Directors ("Board") and committee meetings scheduled for July 27, 2012. The notice was published on July 19, 2012, at 77 FR 42513. This amendment is being made for the sole purpose of adding a phone number for dialing into the Audit Committee meeting. There are no other changes to the notice published on July 19th.

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet on July 27, 2012. The meetings will occur in the order noted below, with the first meeting commencing at 8:30 a.m., Eastern Daylight Time, and each meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. The exception will be the meetings of the Institutional Advancement Committee and the Audit Committee, which will run concurrently immediately upon conclusion of the meeting of the Governance and Performance Review Committee.

LOCATION: Sheraton Ann Arbor Hotel, 3200 Boardwalk Drive, Ann Arbor, Michigan 48108.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones *muted* to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on *hold*. From time to time, the presiding Chair may solicit comments from the public.

Amended Call-In Directions for Open Sessions:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348 *(or 2755431953 to access the Audit Committee meeting);*
- When connected to the call, please immediately "MUTE" your telephone.

Meeting Schedule

Friday, July 27, 2012: Time—8:30 a.m.*

1. Governance & Performance Review Committee
2. Institutional Advancement Committee**

*Please note that all times in this notice are in the *Eastern Daylight Time.*

**The meeting of the Institutional Advancement Committee will run concurrently with the meeting of the Audit Committee.

3. Audit Committee **
4. Finance Committee
5. Promotion & Provision for the Delivery of Legal Services Committee
6. Operations & Regulations Committee
7. Board of Directors

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC.***

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to hear a briefing from a development consultant and to consider and act on a draft development plan for the Corporation.

A verbatim written transcript will be made of the closed session of the Board and Institutional Advancement Committee meetings. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9) and (10), and the corresponding provision of the Legal Services Corporation's implementing regulations, 45 CFR 1622.5(g) and (h), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Governance & Performance Review Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 15, 2012
3. Staff report on certification letter sent to House and Senate Appropriations Committees
4. Staff report on progress in implementing GAO recommendations
5. Consider and act on other business
6. Public comment
7. Consider and act on motion to adjourn meeting

Audit Committee

1. Approval of agenda
2. Approval of minutes of the Committee's June 25, 2012 meeting
3. Report on 403(b) annual plan review and update on annual audit
   - Traci Higgins, Director, Office of Human Resources
4. Consider and act on revised Audit Committee charter
5. Briefing by Office of Inspector General
   - Jeffrey Schanz, Inspector General
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 15, 2012
3. Discussion of Committee work for August—September
4. Public comment
5. Consider and act on other business

Closed Session

6. Briefing by Bob Osborne Development Consultant
7. Consider and act on a draft Development Plan for the Corporation
8. Consider and act on motion to adjourn the meeting

Finance Committee

1. Approval of agenda
2. Presentation on LSC's Financial Reports for the first eight months of FY 2012
   - Presentation by David Richardson, Treasurer/Comptroller
3. Consider and act on a Revised Consolidated Operating Budget for FY 2012, including internal budgetary adjustments and COB reallocation, and recommendation of *Resolution 2012–XXX* to the Board of Directors
   - Presentation by David Richardson, Treasurer/Comptroller
4. Review of the Guidelines for Adoption, Review and Modification of the Consolidated Operating Budget
   - Presentation by David Richardson, Treasurer/Comptroller
5. Discussion regarding the status of the FY 2013 appropriation process
   - Carol Bergman, Director, Government Relations and Public Affairs
6. Consider and act on recommendation to the Board of Directors for FY 2014 Budget Request
   - Presentation by Carol Bergman, Director, Government Relations and Public Affairs
   - Comments by David Richardson, Treasurer/Comptroller
7. Public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

Promotion & Provision for the Delivery of Legal Services Committee

1. Approval of Agenda
2. Approval of Minutes of the Committee's meeting of April 16, 2012
3. Panel Presentation on diversification and expansion of revenue sources
   - Moderator—Meredith McBurney, Resource Development Consultant for ABA Resource Center for Access to Justice Initiatives and Management Information Exchange
   - Steven Gottlieb, Executive Director, Atlanta Legal Aid Society
   - Daniel Glazier, Executive Director, Legal Services of Eastern Missouri
   - Jennifer Bentley, Manager of Outreach and Development, Legal Services of South Central Michigan
   - Deierdre Weir, Executive Director, Legal Aid and Defender Association
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

Operations & Regulations Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of June 18, 2012
3. Consider and act on proposed revisions to the Committee's charter
4. Consider and act on possible revisions to the Corporation's Continuation of Operations Plan ("COOP")
5. Consider and act on rulemaking on grant termination procedures, enforcement mechanisms, and suspension procedures
   - Mark Freedman, Senior Assistant General Counsel
   - Matthew Glover, Associate Counsel to the Inspector General
   - Public comment
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

Board of Directors

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of Minutes of the Board's meeting of May 21, 2012
4. Presentation of the Report of the Pro Bono Task Force
5. Consider and act on the draft Strategic Plan

***Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed sesion. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

6. Chairman's Report
7. Members' Reports
8. President's Report
9. Inspector General's Report
10. Consider and act on the report of the Promotion and Provision for the Delivery of Legal Services Committee
11. Consider and act on the report of the Finance Committee
12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Operations and Regulations Committee
14. Consider and act on the report of the Governance and Performance Review Committee
15. Consider and act on the report of the Institutional Advancement Committee
16. Consider and act on delegation of authority to the LSC Board Chairman to appoint non-directors to serve on LSC Board committees
17. Consider and act on a resolution acknowledging the recent passing of former LSC Board member Thomas A. Fuentes
18. Public comment
19. Consider and act on other business
20. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

21. Approval of minutes of the Board's closed session meeting of April 16, 2012
22. Briefing by Management
23. Briefing by the Inspector General
24. Consider and act on General Counsel's report on potential and pending litigation involving LSC
25. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 20, 2012.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–18175 Filed 7–20–12; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of this collection of information requirements by August 23, 2012.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov,* and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Sharon Mar, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (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.

NSF has determined that it cannot reasonably comply with the normal clearance procedures under 5 CFR 1320 because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. NSF is requesting emergency review from OMB of this information collection, which is a module in the FastLane Project Reports System. The emergency review and approval of this information collection request will assure continuation of the collection of information on student participants in the Research Experiences for Undergraduates (REU) Site and Supplement awards as required in annual and final reports. OMB approval has been requested for August 31, 2012. If granted, the emergency approval is only valid for 180 days.

During this same period, a regular review of this information collection will be undertaken. During the regular review period, the NSF requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until September 24, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

OMB Approval Number: OMB 3145–New.

Expiration Date: N/A.

Overview of This Information Collection

All NSF projects are required to use the FastLane Project Reports System for developing and submitting annual and final project reports. If NSF cannot collect information about undergraduate participants in undergraduate research experiences, NSF will have no other means to consistently document the number and diversity of participants, types of participant involvement in the research, and types of institutions represented by the participants.

NSF is committed to providing program stakeholders within formation regarding the expenditure of taxpayer funds on these types of experiences that provide training for postsecondary students in basic and applied research in STEM. If NSF must follow the normal OIRA clearance review process, the result will be incomplete and inconsistent information about the participants who participate in NSF-funded research experiences for undergraduate students.

Consult With Other Agencies and the Public

NSF has not consulted with other agencies but has gathered information from its grantee community through attendance at PI conferences. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

Background

All NSF grantees are required to use the FastLane Project Reports System for reporting progress, accomplishments, participants, and activities annually and at the conclusion of their project. Information from annual and final reports provides yearly updates on project inputs, activities, and outcomes for agency reporting purposes. If project participants include undergraduate students supported by the Research Experiences for Undergraduates (REU) Sites Program or by an REU Supplement, then the grantees and their students are required to complete the REU Reporting Module.

Respondents: Individuals (Principal Investigators and REU undergraduate student participants).

Number of Principal Investigator Respondents: 2,000.

Burden on the Public: 650 total hours.

Number of REU Student Participant Respondents: 7,250.

Burden on the Public: 1,810 total hours.

Dated: July 18, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–17989 Filed 7–23–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0174]

Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 28, 2012 to July 11, 2012. The last biweekly notice was published on July 10, 2012 (77 FR 40647).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0174. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0174. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0174 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0174.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0174 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to

remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone

at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the 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's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: January 9, 2012.

Description of amendment request: The proposed amendment would change the format of the Operating License (OL) and Technical Specifications (TS) resulting from a change in the word processing programs and the adoption of TSTF–GG–05–01, "Writer's Guide for Plant-Specific Improved Technical Specification," Revision 1. In addition to these administrative changes, the licensee

proposed editorial changes that do not result in changes to the technical or operating requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The Columbia TS have been reformatted to conform to TSTF–GG–05–01 and the TS and OL have been converted to a different word processing program. The impacts of these administrative changes are discussed in Section 2.0 [of the "Description and Evaluation of the Proposed TS Changes" section] and do not affect how plant equipment is operated or maintained. The specific proposed editorial changes are also detailed in Section 2.0 and do not impact the intent or substance of the OL or TS. There are no changes to the physical plant or analytical methods.

The proposed amendment involves administrative and editorial changes only. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed changes do not involve the addition or removal of any equipment or any design changes to the facility. The proposed changes do not affect any plant operations, design functions, or analyses that verify the capability of structures, systems, and components (SSCs) to perform a design function. The proposed changes do not change any of the accidents previously evaluated in the FSAR [Final Safety Analysis Report]. The proposed changes do not affect SSCs, operating procedures, and administrative controls that have the function of preventing or mitigating any of these accidents.

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment only involves administrative and editorial changes. No actual plant equipment or accident analyses will be affected by the proposed changes. The proposed changes will not change the design function or operation of any SSCs. The proposed changes will not result in any new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events.

Therefore, this proposed change does not create the possibility of an accident of a new or different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment only involves administrative and editorial changes. The proposed change does not involve any physical changes to the plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined.

The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1 (PNPP), Lake County, Ohio

Date of amendment request: February 22, 2012.

Description of amendment request: The proposed amendment would modify PNPP's Technical Specifications (TS) 3.10.1, and the associated TS Bases, to expand its scope to include provisions for temperature excursions greater than 200 degrees Fahrenheit (°F) as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. This change is consistent with Nuclear Regulatory Commission (NRC) approved Revision 0 to Technical Specification Task Force (TSTF) Improved Standard TS Change Traveler, TSTF–484, "Use of TS 3.10.1 for Scram Time Testing Activities."

The NRC issued a "Notice of Availability of Model Application on Technical Specification Improvement to Modify Requirements Regarding LCO [Limited Conditions of Operation] 3.10.1, Inservice Leak and Hydrostatic Testing Operation Using Consolidated Line Item Improvement Process," associated with TSTF–484, in the **Federal Register** on October 27, 2006 (71 FR 63050). The NRC also issued a Federal Register notice on August 21, 2006 (71 FR 48561), that provided a model safety evaluation and a model no significant hazards consideration (NSHC) determination related to the modification of requirements regarding LCO 3.10.1, "Inservice Leak and Hydrostatic Testing Operation." In its application dated February 22, 2012, the licensee affirmed the applicability of the model NSHC determination.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at greater than 200 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. These changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure.

Therefore, the proposed change does not result in any reduction in a margin of safety.

Based on the above, FENOC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop. A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Jacob I. Zimmerman.

NextEra Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: May 14, 2010, as supplemented August 24, 2010, September 16, 2011, March 15, 2012, and July 2, 2012.

Description of amendment request: The license amendment request was originally noticed in the **Federal Register** on July 13, 2010 (75 FR 39979). This license amendment request was re-noticed in the **Federal Register** on April 17, 2012 (77 FR 22815). This notice is being reissued in its entirety to include a revised description of the amendment request. The proposed changes would revise the Seabrook Station Technical Specifications (TSs) governing the Containment Enclosure Emergency Air Cleanup System (CEEACS). The proposed amendment would change TS Surveillance Requirement (SR) 4.6.5.1.d.4 so that it will demonstrate integrity of the containment enclosure building rather than operability of CEEACS. The proposed amendment relocates SR 4.6.5.1.d.4 with modifications to new SR 4.6.5.2.b. The proposed amendment adds a Note and Actions to TS 3.6.5.2. Additionally, the proposed amendment makes some minor wording changes, deletes a definition, and removes a moot footnote.

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not impact the physical function of plant structures, systems, or components (SSCs) or the manner in which SSCs perform their design function. The proposed changes neither adversely affect accident initiators or precursors, nor alter design assumptions. The proposed changes do not alter or prevent the ability of operable SSCs to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

This change is a revision to the TSs SRs for the CEEACS, which is a mitigation system designed to prevent uncontrolled releases of radioactivity into the environment. The proposed amendment would change TS SR 4.6.5.1.d.4 so that it will demonstrate integrity of the containment enclosure building rather than operability of CEEACS. The proposed amendment relocates SR 4.6.5.1.d.4 with modifications to new SR 4.6.5.2.b. The CEEACS is not an initiator or precursor to any accident previously evaluated.

Therefore, the probability of any accident previously evaluated is not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not impact the accident analysis. The changes will not alter the requirements of the CEEACS or its function during accident conditions, and no new or different accidents result from the proposed changes to the TSs.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the method of plant operation. The changes do not alter assumptions made in the safety analysis. Therefore, this request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes do not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, and will not relax the bases for any limiting conditions for operation. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design bases. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Meena Khanna.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: May 8, 2012.

Description of amendment request: The licensee proposed to revise the Technical Specifications (TS), Section 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," requirements pertaining to the Average Power Range Monitors (APRMs). Specifically, the licensee proposed to add a time period for restoration when the absolute difference between the APRM channels and the calculated thermal power exceeds the limit before declaring the channels inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC) analysis, which is reproduced below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides time for restoration when the APRMs do not meet the limit of SR [Surveillance Requirement] 3.3.1.1.2. The APRM system is not an initiator of or a precursor to any accident or transient. Plant design is not being modified by the proposed change. The capability of the APRMs to perform their required functions under these circumstances is not degraded since the safety analyses include the power uncertainty.

As a result, the probability of any accident previously evaluated is not significantly increased. The consequences of any accident

previously evaluated [using] the requested Completion Time are no different [than that using] the current Completion Time. As a result, the probability or consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the TS requirements for the APRM system do not introduce any new accident precursors and do not involve any physical plant alterations or changes in the methods governing normal plant operation that could initiate a new or different kind of accident. The changes do not alter assumptions made in the safety analysis and are consistent with the safety analysis assumptions. The proposed amendment does not alter the intended function of the APRM system and does not adversely affect the ability of the system to provide core protection.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change does not involve a significant reduction in a margin of safety since the extended time is small and allows for operator consideration of plant conditions, personnel availability, and appropriate response.

Margin of safety is related to confidence in the ability of the fission product barriers (fuel cladding, reactor coolant system, and primary containment) to perform their design functions during and following postulated accidents. The proposed amendment does not alter setpoints or limits established or assumed by the accident analyses. The TSs will continue to require operability of these APRM functions to provide core protection for postulated reactivity insertion events occurring during power operating conditions, consistent with the plant safety analyses. This change is consistent with plant design and does not change the actual TS operability requirements; thus, previously evaluated accidents are not affected by this proposed change.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and concludes that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for the licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Istvan Frankl, Acting.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1 (VCSNS), Fairfield County, South Carolina

Date of amendment request: June 29, 2012.

Description of amendment request: The proposed change adds Notes to the VCSNS Unit 1 Technical Specification 3.5.4, for the refueling water storage tank (RWST) to allow administrative control of the seismically qualified RWST/non-seismic spent fuel pool (SFP) purification loop interface. This change would only be applicable for the next two fuel cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident that has previously been evaluated?

Response: No.

The SFP Purification Loop is not credited for safe shutdown of the plant or accident mitigation. A combination of design and administrative controls ensure that the SFP Purification Loop maintains RWST boron concentration and water volume requirements whenever the contents of the RWST are processed through the system. Since the RWST will continue to perform its safety function and meet all surveillance requirements, overall system performance is not affected, assumptions previously made in evaluating the consequences of the accident are not altered, and the consequences of the accident are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident of malfunction that has not previously been evaluated?

Response: No.

Contingent upon manual operator action as described above, a SFP Purification Loop line break will not result in a loss of the RWST safety function. The Engineering Information Request (EIR) evaluation supports that operator action can be taken within sufficient time to isolate the RWST from the SFP Purification Loop during postulated accidents. The 3 [inch] SFP Purification Loop is not currently included in the Auxiliary Building flood calculation. The issue was previously evaluated and the bounding flood rates (generally in the 600 gpm [gallons per minute] to 725 gpm range) were evaluated for the Auxiliary Building. The calculated leak rate of 474 gpm remains within these limits.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The SFP Purification Loop is not credited for safe shutdown of the plant or accident mitigation. Contingent upon manual operator action as described above, a SFP Purification Loop line break will not result in a loss of the RWST safety function. The EIR evaluation supports that operator action can be taken within sufficient time to isolate the RWST from the SFP Purification Loop during postulated accidents. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SCE&G concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Nancy L. Salgado.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 23, 2012 (TS–SQN–12–01).

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.8.1 to include a surveillance requirement (SR) to demonstrate the required offsite circuits OPERABLE at least once per 18 months by manually and automatically transferring the power supply to a 6.9 KiloVolt (kV) unit board from the normal supply to the alternate supply. This change is necessary as a result of the planned modifications to the plant design and operating configuration that will allow use of the unit station service transformers (USSTs) as a power supply to an offsite circuit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The offsite circuits and their associated emergency loads are accident mitigating features. As such, testing of the transfer capability between the normal and alternate power supplies is not associated with a potential accident-initiating mechanism. Therefore, the changes do not affect accident or transient initiation or consequences. The probability or consequences of previously evaluated accidents will not be significantly affected by the addition of the proposed offsite power source or surveillance requirement. Verification of the capability to transfer power from the USSTs to the CSSTs [common station service transformers] demonstrates the availability of the offsite circuit to perform its accident mitigation functions as assumed in the accident analyses. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not require any new or different accidents to be postulated, since no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems in a manner that would create a new or different kind of accident; nor does it have any impact on any accident mitigating systems that would significantly degrade the plant's response to an accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed plant modifications will allow an offsite circuit configuration where the USSTs are capable of supplying normal power, and alternate power is supplied by CSST A or CSST C. These design changes require reinstatement of the TS SR to demonstrate the capability to automatically transfer the power supply to each 6.9 kV Unit Board from the normal supply to the alternate supply. The proposed changes to the unit power operating configuration do not alter the assumptions contained in the safety analyses regarding the availability of the offsite circuits. The proposed changes do not adversely impact the redundancy or availability requirements of offsite power supplies or change the ability of the plant to cope with station blackout events. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, et al., Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of application for amendment: February 10, 2012.

Brief description of amendment: The amendment revised the Technical Specification (TS) surveillance requirements for addressing a missed surveillance, and is consistent with the U.S. Nuclear Regulatory Commission approved Revision 6 of Technical Specification Task Force (TSTF) Standard TSs Change Traveler TSTF–358, "Missed Surveillance Requirements."

Date of issuance: July 6, 2012.

Effective date: As of date of issuance and shall be implemented within 120 days.

Amendment No.: 229.

Renewed Facility Operating License No. DPR–23: Amendment changed the license and TSs.

Date of initial notice in **Federal Register:** April 17, 2012 (77 FR 22810).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 2012.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit 2, New London County, Connecticut

Date of application for amendment: September 21, 2011, as supplemented by letter dated February 24, 2012.

Brief description of amendment: The amendment revises Technical Specification surveillance requirements (SRs) for snubbers to conform to the revised inservice inspection program, move the specific SRs of TS 3/4.7.8, "Snubbers," to the "Snubber Examination, Testing, and Service Life Monitoring Program," add a reference to the program in the administrative controls section, and make administrative changes to TS 3/4.7.8.

Date of issuance: June 28, 2012.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 310.

Renewed Facility Operating License No. DPR–65: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 2011 (76 FR 73730).

The supplemental letters contain clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant

hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2012.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 15, 2011, as supplemented by letter dated February 13, 2012.

Brief description of amendment: The amendment revises the Limiting Condition for Operation (LCO) 3.8.1, "AC Sources—Operating," through a reduction to the maximum steady state voltage criteria for safety-related 4.16 kV buses from 4580 V to 4300 V in certain Technical Specification (TS) Section 3.8.1 Surveillance Requirements.

Date of issuance: May 22, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 199.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** October 18, 2011 (76 FR 64391).

The February 13, 2012, supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2012.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–335, St. Lucie Plant, Unit 1, St. Lucie County, Florida

Date of application for amendment: November 22, 2010, as supplemented by letters dated February 25, 2011, March 3, March 14, March 22, April 1, April 21, May 17, May 18, May 19 (three letters), May 24, May 27, May 31 (two letters), June 16, June 22, July 5, July 8, July 22, August 5, August 8, August 12, August 18, August 25 (two letters), August 31, September 2 (two letters), September 8 (two letters), September 22, September 23, September 27, September 29, September 30, October 10, October 14, October 20, October 21, October 27, October 31 (six letters), November 1, November 23, November 29, December 1, December 2, December 14, December 27, 2011, January 2, 2012, January 10, January 14, January 25, February 11, February 21, February 29 (three letters), March 6 (two letters), March 8, March 15, March 16, March 22, and March 26, 2012.

Brief description of amendment: The proposed amendments would increase the licensed core power level for St. Lucie Unit 1 from 2070 megawatts thermal (MWt) to 3020 MWt. This represents a net increase in the core thermal power of approximately 11.85 percent, including a 10-percent power uprate and a 1.7 percent measurement uncertainty recapture, over the current licensed thermal power level and is defined as an extended power uprate. The proposed amendments would change the renewed facility operating license and the technical specifications (TSs) to support operation at the increased core thermal power level, including changes to the maximum licensed reactor core thermal power, reactor core safety limits, and reactor protection system and engineered safety feature actuation system limiting safety system settings. Additional TS changes include reactor coolant system heatup and cooldown limitations, safety injection tank pressure, hot leg safety injection flow, accumulator and refueling water storage tank boron concentrations, main steam safety valve lift settings, condensate storage tank volume, emergency diesel generator fuel storage and core operating limits report references. A complete list of the proposed TS changes and the licensee's basis for change can be found in Attachment 1 of the licensee's application (Agencywide Documents and Management System Accession No. ML103560422).

Date of issuance: July 9, 2012.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 60 days.

Amendment No.: 213.

Renewed Facility Operating License No. DPR–67: Amendment revised the Operating License and the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 2011 (76 FR 33789).

The supplemental letters provided additional information that clarified the application and did not expand the scope of the application as originally noticed and published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 2012.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 1, 2011, as supplemented by letters dated August 17 and November 9, 2011.

Brief description of amendment: The amendment adopted the NRC-approved Technical Specifications Task Force traveler TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b." Specifically, the amendment relocates most frequencies of periodic surveillances from each unit's TS to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP), and imposes requirements for the new SFCP in the Administrative Controls section of the TS.

Date of issuance: June 29, 2012.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: Unit 1—156; Unit 2—156.

Facility Operating License Nos. NPF–87 and NPF–89: The amendment revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 2011 (76 FR 61397), which addresses the changes proposed by letters dated August 1 and August 17, 2012. The supplemental letter dated November 9, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2012.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Unit 1 and 2, Somervell County, Texas

Date of amendment request: December 13, 2011.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.7.2, "Main Steam Isolation Valves (MSIVs)," and TS 3.7.3, "Feedwater Isolation Valves (FIVs) and Feedwater Control Valves (FCVs) and Associated Bypass Valves," in accordance with previously approved Technical Specification Task Force (TSTF) Change Traveler TSTF–491,

Revision 2, by relocating the closure times for MSIVs, FIVs, FCVs, and associated bypass valves to the Technical Requirements Manual (TRM). The availability of TSTF–491, Revision 2, was announced in the **Federal Register** on December 29, 2006 (71 FR 78472), as part of the Consolidated Line Item Improvement Process (CLIIP).

Date of issuance: June 29, 2012.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—157; Unit 2—157.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 2012 (77 FR 3511).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2012.

No significant hazards consideration comments received: No.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: October 12, 2011.

Brief description of amendment: The amendment authorizes revision of the Final Safety Analysis Report (FSAR) to reflect deletion of five high head safety injection (HHSI) containment isolation valves from the local leak rate test program on the basis that they are in lines that are closed outside of containment.

Date of issuance: July 9, 2012.

Effective date: This license amendment is effective as of the date of its issuance.

Amendment No.: 191.

Renewed Facility Operating License No. NPF–12: Amendment revises the License.

Date of initial notice in **Federal Register**: December 13, 2011 (76 FR 77570).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 2012.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: July 15, 2011, as supplemented on October 20, 2011 (TS–SQN–2011–01).

Brief description of amendment: The proposed amendment revised the Technical Specifications (TSs) requirements for steam generator (SG) tube inspections to reflect the replacement steam generators (RSGs) to be installed during refueling outage 18 presently scheduled for the fall of 2012. Previous changes to the TSs to reflect the Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–449, "Steam Generator Tube Integrity," Revision 4, were approved by the U.S. Nuclear Regulatory Commission (NRC) on May 22, 2007. The changes proposed in this amendment reflect the inspection requirements of TSTF–449, Revision 4. The RSG tubes will be made of Alloy 690 thermally treated (TT) material, and the existing SGs have Alloy 600 tubes. The revisions to TSs are required because the inspection frequency for Alloy 690 TT tube material, as defined in TSTF–449, differs from the inspection frequency for Alloy 600, and the tube repair processes and products in the existing TSs are not applicable to the RSGs.

Date of issuance: July 10, 2012.

Effective date: As of the date of issuance and shall be implemented upon startup from fall 2012 refueling outage after completing the installation of new steam generators.

Amendment No.: 323.

Facility Operating License No. DPR–79: Amendment revised the TSs.

Date of initial notice in **Federal Register**: September 6, 2011 (76 FR 55131). The supplement letter dated October 20, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 13th day of July 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17869 Filed 7–23–12; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336; NRC–2012–0158]

Millstone Power Station, Unit 2; Exemption

1.0 Background

Dominion Nuclear Connecticut, Inc., (the licensee, Dominion) is the holder of Renewed Facility Operating License No. DPR–65, which authorizes operation of the Millstone Power Station, Unit 2 (MPS2). 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 or the Commission) now or hereafter in effect.

MPS2 shares the site with Millstone Power Station Unit 1, a permanently defueled boiling water reactor nuclear unit, and Millstone Power Station Unit 3, a pressurized water reactor. The facility is located in Waterford, Connecticut, approximately 3.2 miles west southwest of New London, CT. This exemption applies to MPS2 only. The other units, Units 1 and 3, are not part of this exemption.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) 50.48, requires that nuclear power plants that were licensed before January 1, 1979, satisfy the requirements of 10 CFR Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," Section III.G, "Fire protection of safe shutdown capability." MPS2 was licensed to operate prior to January 1, 1979. As such, the licensee's Fire Protection Program (FPP) must provide the established level of protection as intended by Section III.G of 10 CFR Part 50, Appendix R.

By letter dated June 30, 2011, "Request for Exemption from 10 CFR Part 50, Appendix R, Section III.G, Fire Protection of Safe Shutdown Capability" available at Agencywide Documents Access and Management System (ADAMS), Accession No. ML11188A213, and supplemented by letter dated February 29, 2012, "Response to Request for Additional Information Request for Exemption from 10 CFR Part 50, Appendix R, Section III.G, Fire Protection of Safe Shutdown Capability" (ADAMS Accession No. ML12069A016), the licensee requested an exemption for MPS2, from certain technical requirements of 10 CFR Part 50, Appendix R, Section III.G.2 (III.G.2) for the use of operator manual actions (OMAs) in lieu of meeting the circuit

separation and protection requirements contained in III.G.2 for fire areas:

R–2/Fire Hazards Analysis (FHA) Zone A–8C, Zone A–8D, Zone A–13, Zone T–8, Zone T–10;
R–4/FHA Zone A–6A, Zone A–6B;
R–5/FHA Zone A–8A;
R–6/FHA Zone A–3;
R–7/FHA Zone A–15;
R–8/FHA Zone A–16;
R–9/FHA Zone A–20;
R–10/FHA Zone A–21;
R–12/FHA Zone T–4;
R–13/FHA Zone T–6;
R–14/FHA Zone T–7, Zone T–9;
R–15/FHA Zone C–1;
R–17/FHA Zone A–10A, Zone A–10B, and Zone A–10C.

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. The licensee has stated that special circumstances are present in that the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule, which is consistent with the language included in 10 CFR 50.12(a)(2)(ii). The licensee further states that the OMAs included in the exemption request provide assurance that one train of systems necessary to achieve and maintain hot shutdown will remain available in the event of a fire.

In accordance with 10 CFR 50.48(b), nuclear power plants licensed before January 1, 1979, are required to meet Section III.G, of 10 CFR Part 50, Appendix R. The underlying purpose of Section III.G of 10 CFR Part 50, Appendix R, is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event. The regulation intends for licensees to accomplish this by extending the concept of defense-in-depth to:

a. Prevent fires from starting;

b. Rapidly detect, control, and extinguish promptly those fires that do occur;

c. Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The stated purpose of III.G.2 is to ensure that in the event of a fire, one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage. III.G.2 requires one of the following means to ensure that a redundant train of safe shutdown cables and equipment is free of fire damage, where redundant trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; or

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

The licensee stated that the OMAs addressed in the exemption request are those contained in the MPS2 Appendix R Compliance Report. The licensee stated that the MPS2 Appendix R Compliance Report was submitted to the NRC for review on May 29, 1987 (ADAMS Legacy Library Accession No. 8706120088, available at NRC Public Document Room) and found acceptable by an NRC safety evaluation report (SER) dated July 17, 1990 (ADAMS Accession No. ML012880391), but that the SER did not specifically address the OMAs.

Each OMA included in this review consists of a sequence of tasks that need to be performed in various fire areas. The OMAs are initiated upon confirmation of a fire in a particular fire area. Table 1 lists the OMAs included in this review (OMAs are listed in the order they are conducted for a fire originating in a particular area). Some OMAs are listed more than once, if they are needed for fires that originate in different areas.

TABLE 1

Area of fire origin	Area name	Actions	OMA
Fire Area R–2	West Penetration Area, Motor Control Center B61, and the Facility Z2 Upper 4.16kV Switchgear Room and Cable Vault.	Pull Control Power Fuses and Ensure Breaker A305 is Open	OMA 12
		Operate Valve 2–MS–190A to Transition from Main Steam Safety Valves.	OMA 10
		Check Local Condensate Storage Tank Level Indication at LIS–5489.	OMA 20
		Open Breaker to Fail Valve 2–CH–517 Closed	OMA 6
		Check Local Level Indication at LI–206A	OMA 18
		Check Local Boric Acid Storage Tank Level Indication at LI–208A.	OMA 19
		Open Valve 2–CH–429 to Establish Charging Flow Path	OMA 2
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
		Open Valve 2–CS–13.1B to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 8
Fire Area R–4	Charging Pump Cubicles	Control at Panel C–10 Until Loss of Air, Operate Valve 2–MS–190B to Transition from Main Steam Safety Valves.	OMA 11
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
Fire Area R–5	"A" Safeguards Room (High Pressure Safety Injection/Low Pressure Safety Injection).	Operate Valve 2–MS–190A to Transition from MSSVs	OMA 10

TABLE 1—Continued

Area of fire origin	Area name	Actions	OMA
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
Fire Area R–6	"B" Safeguards Room (Low Pressure Safety Injection).	Operate Valve 2–MS–190A to Transition from Main Steam Safety Valves.	OMA 10
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
Fire Area R–7	Diesel Generator Room A	Control at Panel C–10 Until Loss of Air, Operate Valve 2–MS–190B to Transition from Main Steam Safety Valves.	OMA 11
		Open Valve 2–CH–508 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 4
		Open Valve 2–CH–509 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 5
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
Fire Area R–8	Diesel Generator Room B	Operate Valve 2–MS–190A to Transition from Main Steam Safety Valves.	OMA 10
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
		Check Local Condensate Storage Tank Level Indication at LIS–5489.	OMA 20
Fire Area R–9	Facility Z1 Direct Current Switchgear Room and Battery Room.	Open Valve 2–CH–508 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 4
		Open Valve 2–CH–509 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 5
Fire Area R–10	Facility Z2 Direct Current Equipment Room and Battery Room.	Check Local Condensate Storage Tank Level Indication at LIS–5489.	OMA 20
		Check Local Boric Acid Storage Tank Level Indication at LI–206A.	OMA 18
		Check Local Boric Acid Storage Tank Level Indication at LI–208A.	OMA 19
Fire Area R–12	Turbine Driven Auxiliary Feedwater Pump Pump Pit.	Operate Valve 2–MS–190A to Transition from Main Steam Safety Valves.	OMA 10
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
Fire Area R–13	West (Facility Z1) 480 VAC Switchgear Room.	Operate Valve SV–4188 from Panel C–10	OMA 22
		Operate Speed Control Circuit H–21 from Panel C–10 to Control Turbine Driven Auxiliary Feedwater Pump Speed.	OMA 17
		Check Local Condensate Storage Tank Level Indication at LIS–5489.	OMA 20
		Pull Control Power Fuses and Ensure Breaker A406 is Open	OMA 16
		Close Breaker DV2021 at Panel DV20	OMA 24
		Open Valve 2–CH–508 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 4
		Open Valve 2–CH–509 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 5
		Operate Pump P18C from Panel C–10	OMA 21
Fire Area R–14	Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault.	Open Valve 2–CH–508 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 4
		Open Valve 2–CH–509 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 5
		Pull Control Power Fuses and Ensure Breaker A410 is Open to Isolate Required Bus.	OMA 14
		Pull Control Power Fuses and Ensure Breaker A408 is Open to Isolate Required Bus.	OMA 13
		Pull Control Power Fuses and Ensure Breaker A401 is Closed to Power Bus from the Emergency Diesel Generator.	OMA 23
		Pull Control Power Fuses and Ensure Breaker A411 is Open to Isolate Required Bus.	OMA 15
		Close Breaker DV2021 at Panel DV20	OMA 24
Fire Area R–15	Containment Building	Operate Valve 2–MS–190A to Transition from Main Steam Safety Valves.	OMA 10

TABLE 1—Continued

Area of fire origin	Area name	Actions	OMA
		Control at Panel C–10 Until Loss of Air, Operate Valve 2–MS–190B to Transition from Main Steam Safety Valves.	OMA 11
		Open Breaker to Fail Valve 2–CH–517 Closed	OMA 6
		Open Breaker to Fail Valve 2–CH–519 Open to Establish Charging Flow Path.	OMA 7
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1
Fire Area R–17	East Penetration Area	Control at Panel C–10 Until Loss of Air, Operate Valve 2–MS–190B to Transition from Main Steam Safety Valves.	OMA 11
		Open Valve 2–CH–508 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 4
		Open Valve 2–CH–509 to Obtain Charging Pump Suction from Boric Acid Storage Tank.	OMA 5
		Open Valve 2–CH–192 to Establish Charging Pump Suction from Refueling Water Storage Tank.	OMA 1

The designation Z1 and Z2 are used throughout this exemption. The licensee stated that the 4.16 kV subsystems are divided into two specific "Facilities" and that Facility Z1 or Z1 Power begins with load center 24C which powers one train of Engineered Safety Features (ESFs) and is provided with an emergency power supply by the "A" Emergency Diesel Generator (EDG) while Facility Z2 begins with load center 24D and powers a redundant second train of ESF and is provided with an emergency power supply by the "B" EDG. The licensee also stated that vital power and control cables fall mainly into two redundancy classifications; Channel Z1 and Channel Z2 and that in a few cases there is also a Channel Z5, which is a system that can be transferred from one source to another. The licensee further stated that, Facility Z1 would be synonymous with "A" train while Facility Z2 would be synonymous with "B" train.

The licensee stated that their exemption request is provided in accordance with the information contained in Regulatory Issue Summary (RIS) 2006–10, "Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions," which states that an approved 10 CFR 50.12 exemption is required for all OMAs, even those accepted in a previously issued NRC SER.

Dominion has requested an exemption from the requirements of III.G.2 for MPS2 to the extent that one of the redundant trains of systems necessary to achieve and maintain hot shutdown is not maintained free of fire damage in accordance with one of the required means, for a fire occurring in the following fire areas:

R–2 West Penetration Area, Motor Control Center (MCC) B61, and the Facility Z2 Upper 4.16kV Switchgear Room and Cable Vault;
R–4 Charging Pump Cubicles;
R–5 "A" Safeguards Room;
R–6 "B" Safeguards Room;
R–7 Diesel Generator Room "A";
R–8 Diesel Generator Room "B";
R–9 Facility Z1 DC Switchgear Room and Battery Room;
R–10 Facility Z2 DC Switchgear Room and Battery Room;
R–12 Turbine Driven Auxiliary Feedwater Pump Pit;
R–13 West 480 VAC Switchgear Room;
R–14 Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault;
R–15 Containment Building;
R–17 East Penetration Area.

The licensee stated that the OMAs are credited for the III.G.2 deficiencies, such as having only a single safe shutdown train, lack of separation between redundant trains, lack of detection and automatic suppression in the fire area or a combination of those deficiencies. The NRC staff notes that having only a single safe shutdown train is not uncommon to this plant design. Single train systems at MPS2 include Instrument Air (IA), "A" and "B" Boric Acid Storage Tank (BAST) Control Room (CR) level indication, Condensate Storage Tank (CST) CR level indication, suction-side flow to the Charging Pumps from the Refueling Water Storage Tank (RWST), auxiliary spray to the Pressurizer, and Charging Pump discharge to the Reactor Coolant System (RCS).

The licensee also stated that they have evaluated/modified all motor operated valves (MOVs) relied upon by OMAs consistent with NRC Information Notice (IN) 92–18 (February 28, 1992) which detailed the potential for fires to damage MOVs that are required for safe shutdown so that they can no longer be remotely or manually operated and that as a result of this evaluation and modifications, the possibility that the desired result was not obtained is minimized. The licensee further stated that all the equipment operated to perform these OMAs are not fire affected and therefore are reasonably expected to operate as designed with one exception being in fire area R–4 concerning the performance of OMA 1 (see section 3.2.4.1.1) The licensee further stated that valve 2–CH–192 could be fire affected, however, it is an (air operated valve (AOV) that fails closed on loss of IA or power and is normally closed and that a fire event in this area will not cause this valve to be driven beyond its stops and that the valve will not be overtourqued. The licensee further stated that operating valve 2–CH–192 is not required until the BASTs are nearly depleted; a minimum of 72 minutes after charging is reestablished (which is not required until 180 minutes) and that a fire directly impacting valve 2–CH–429 would result in the valve failing in the desired open position.

In their submittals, the licensee described elements of their FPP that provide their justification that the concept of defense-in-depth that is in place in the above fire areas is consistent with that intended by the regulation. To accomplish this, the licensee utilizes various protective measures to accomplish the concept of defense-in-depth. Specifically, the licensee stated that the purpose of their request was to credit the use of OMAs, in conjunction with other defense-in-depth features, in lieu of the separation and protective measures required by III.G.2. Their approach is discussed below.

The licensee provided an analysis that described how fire prevention is addressed for each of the fire areas for which the OMAs may be required.

Unless noted otherwise below, all of the fire areas included in this exemption have a combustible fuel load that is considered to be low, with fuel sources consisting primarily of fire retardant cable insulation and limited floor based combustibles. The licensee also stated that two of the fire areas (R–7/FHA Zone A–15 and R–8/FHA Zone A–16) have high combustible loading consisting of fuel oil and lube oil and that automatic pre-action fire suppression systems are provided in these areas. The licensee further stated that two other fire areas (R–17/FHA Zone A–10A and R–12/FHA Zone T–4) contain negligible combustible loading, with combustibles in these areas consisting of Class A combustibles and lube oil. There are no high energy ignition sources located in the areas except as noted in fire areas R–2 and R–14. The fire areas included in the exemption request are not shop areas so hot work activities are infrequent with administrative control (e.g., hot work permits, fire watch, and supervisory controls) programs in place if hot work activities do occur. The administrative controls are described in the Millstone FPP, which is incorporated into the Updated Final Safety Analysis Report.

The licensee stated that the storage of combustibles is administratively controlled by the site's FPP procedures to limit the effects of transient fire exposures on the plant and in addition, hot work (i.e., welding, cutting, grinding) is also administratively controlled by site FPP procedure CM–AA–FPA–100.

The licensee indicated that their FPP uses the concept of defense-in-depth, both procedurally and physically, to meet the following objectives: 1. Prevent fires from starting; 2. Rapidly detect, control, and extinguish promptly, those fires that do occur; and, 3. Provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant. The licensee also stated that the integration of the program, personnel, and procedures, which are then collectively applied to the facility, reinforce the defense in-depth aspect of the FPP and that strict enforcement of ignition source and transient combustible control activities (through permitting), and monthly fire prevention inspections by the site Fire Marshal ensure that this work is actively monitored to prevent fires.

The MPS Fire Brigade consists of a minimum of a Shift Leader and four Fire Brigade personnel. The affected unit (MPS2 or MPS3) supplies an advisor, who is a qualified Plant Equipment Operator (PEO). The advisor provides direction and support concerning plant operations and priorities. Members of the Fire Brigade are trained in accordance with MPS, Station Procedure TQ–1, Personnel Qualification and Training. Fire Brigade personnel are responsible for responding to all fires, fire alarms, and fire drills and to ensure availability, a minimum of a Shift Leader and four Fire Brigade personnel remain in the Owner Controlled Area and do not engage in any activity which would require a relief in order to respond to a fire. The licensee further stated that the responding Fire Brigade lead may request the Shift Manager (SM) augment the on-shift five member Fire Brigade with outside resources from the Town of Waterford Fire Department which has a letter of agreement with MPS, to respond to the site (when requested) in the event of a fire emergency or rescue and will attempt to control the situation with available resources.

MPS2 has been divided into fire areas, as described in the MPS FPP. Three-hour fire barriers are normally used to provide fire resistive separation between adjacent fire areas. In some cases, barriers with a fire resistance rating of less than three hours are credited but exemptions have been approved or engineering evaluations performed in accordance with Generic Letter 86–10 to demonstrate that the barriers are sufficient for the hazard. Walls separating rooms within fire areas are typically constructed of heavy concrete. The licensee stated that in general, fire rated assemblies separating Appendix R fire areas meet Underwriters Laboratories/Factory Mutual (UL/FM) design criteria and the requirements of American Society of Testing Materials (ASTM) E–119, "Fire Test of Building Construction and Materials" for 3-hour rated fire assemblies. The licensee also stated that openings created in fire rated assemblies are sealed utilizing penetration seal details that have been tested in accordance with ASTM E–119 and are qualified for a 3-hour fire rating, in addition, fireproof coating of structural steel conforms to UL–Listed recognized details and is qualified for a 3-hour fire rating. The licensee further stated that fire dampers are UL–Listed and have been installed in accordance with the requirements of National Fire Protection Association (NFPA) 90A, "Standard for the Installation of Air Conditioning and Ventilation Systems," and that the code of record for fire dampers is either the version in effect at the time of original plant construction (late 1960s) or the 1985 edition. The licensee further stated that fire doors are UL–Listed and have been installed in accordance with NFPA 80, "Standard for Fire Doors and Windows" in effect at the time of plant construction (late 1960s).

The licensee provided a discussion of the impacts of any Generic Letter (GL) 86–10 evaluations and/or exemptions on the fire areas included in this exemption request. For all the areas with GL 86–10 evaluations and/or other exemptions, the licensee stated that none of the issues addressed by the evaluations would adversely impact, through the spread of fire or products of combustion, plant areas where OMAs are performed or the respective travel paths necessary to reach these areas. The licensee also stated that there are no adverse impacts on the ability to perform OMAs and that the conclusions of the GL 86–10 evaluations and the exemption requests would remain valid with the OMAs in place. In addition to these boundaries, the licensee provided a hazard analysis that described how detection, control, and extinguishment of fires are addressed for each of the fire areas for which the OMAs may be needed.

Unless noted otherwise below, fire areas are provided with ionization smoke detectors. The licensee stated that the smoke and heat detection systems were designed and installed using the guidance of the requirements set forth in several NFPA standards including the 1967, 1979, and 1986 Editions of NFPA 72D, "Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchman, Fire Alarm and Supervisory Service," and the 1978 and 1984 Editions of NFPA 72E, "Standard on Automatic Fire Detectors." Upon detecting smoke or fire, the detectors initiate an alarm in the CR enabling Fire Brigade response. The licensee stated that in most cases, no automatic fire suppression systems are provided in the areas included in this exemption request except for plant areas with significant quantities of combustibles, such as lube oil. Automatic fire suppression systems have also been installed in areas with one-hour barrier walls and one-hour rated electrical raceway encapsulation.

The licensee stated that fire suppression systems were designed in general compliance with, and to meet the intent of the requirements of several NFPA standards depending on the type of system including the 1985 Edition of NFPA 13, "Standard for the Installation of Sprinkler Systems," the 1985 Edition of NFPA 15, "Standard for Water Spray

Fixed Systems For Fire Protection," and the 1987 Edition of NFPA 12A, "Standard on Halon 1301 Fire Extinguishing Systems."

The licensee stated that in general, fire extinguishers and hose stations have been installed in accordance with the requirements of the 1968 Edition of NPFA 10, "Standard for the Installation of Portable Fire Extinguishers" and the 1978 Edition of NFPA 14, "Standard for the Installation of Standpipe and Hose Systems," respectively. The licensee stated that Equipment Operators are trained Fire Brigade members and would likely identify and manually suppress or extinguish a fire using the portable fire extinguishers and manual hose stations located either in or adjacent to, or both, these fire areas.

Each of the fire areas included in this exemption is analyzed below with regard to how the concept of defense-in-depth is achieved for each area and the role of the OMAs in the overall level of safety provided for each area.

3.1 Fire Area R–2, West Cable Vault, Upper 6.9 and 4.16kV Switchgear Rooms, 480V MCC B61 and B41A Enclosure, West Piping Penetration Area, West Electrical Penetration Area

3.1.1 Fire Prevention

The licensee stated that the West Cable Vault, the Upper 6.9 and 4.16 kV Switchgear Room, the 480V MCC B61 and B41A Enclosure, and the West Piping Penetration Area have low combustible loading that predominantly consists of cable insulation and that potential ignition sources for these areas includes electrical faults.

The licensee stated that the West Electrical Penetration Area has low to moderate combustible loading that includes small amounts of plastics and cellulosic materials and that potential ignition sources include electrical faults.

3.1.2 Detection, Control and Extinguishment

The licensee stated that the West Cable Vault is provided with an automatic wet-pipe sprinkler system designed to protect structural steel in this area from the adverse affects of a fire, and also protected by an ionization smoke detection system that alarms at the main fire alarm panel in the CR. In addition, the licensee stated that the vertical cable chase that leads down the Auxiliary Building (AB) cable vault is protected by an automatic deluge spray system which is actuated by a cross-zoned smoke detection system that alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that a fire in the West Cable Vault that could potentially impact a cable of concern would likely involve cable insulation and result from an electrical fault and that combustibles in this area consist predominantly of Institute of Electrical and Electronics Engineers (IEEE) 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics (not self-igniting or capable of propagating flame after pilot ignition source is removed). The licensee also stated that were a cable fire to occur in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade and that in the unlikely event the fire advanced beyond its incipient stage, it would actuate the installed automatic wet-pipe suppression system which consists of sprinklers located in each beam pocket and provides reasonable assurance that a cable tray fire in this area will be controlled and confined to the immediate area of origin, and will limit fire exposure/damage.

The licensee stated that the Upper 6.9 and 4.16kV Switchgear Room has ionization smoke detection located directly over each switchgear cabinet that alarms at the main fire alarm panel in the CR. The licensee further stated that a fire in the Upper 6.9 and 4.16 kV Switchgear Room that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of Bus 25B, which is located several feet away from the subject cable tray and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system, which consists of an ionization smoke detector located directly over each switchgear cabinet in the area, will aid in providing prompt Fire Brigade response.

The licensee stated that the 480V MCC B61 and B41A enclosures are provided with ionization smoke detection that alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that the steel enclosure of the MCC room is protected by a wet pipe water spray system in lieu of a three hour fire barrier. The licensee further stated that a fire in the 480 V MCC B61 and B41A enclosures that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of one of the MCC's located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that a failure of MCC B–41B could also serve as an ignition source and that an MCC failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables despite the fact that the subject cable trays are located approximately 6–8' above the MCC. The smoke detection system, which consists of an ionization smoke detector located directly over MCC B61, will aid in providing prompt Fire Brigade response.

The licensee stated that the West Piping Penetration Area is provided with an ionization smoke detection system, which alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the West Piping Penetration area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a switchgear failure, which could act as a pilot ignition source for the cable insulation and that a switchgear failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

The licensee stated that the West Electrical Penetration Area is provided with an ionization smoke detection system, which alarms at the main fire alarm panel in the CR. The licensee further stated that a fire in the West Electrical Penetration Area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire

resistive characteristics. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.1.3 Preservation and Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the West Cable Vault are related to failure of the feed to the 480V load center bus 22F or the "B" EDGs control and power cables and that loss of bus 22F results in the loss of the "B" battery charger and the eventual depletion of the "B" battery which in turn results in the loss of level transmitter LT–5282.

The licensee stated that the cables of concern in the Upper 4.16 kV Switchgear Room are for valves 2–CH–429 and 2–CH–517, level transmitters LT–5282, LT–206 and LT–208 and breaker A305. The licensee also stated that the cabling of concern is part of the breaker control logic and coordination between buses 24C, 24D and 24E and that components 2–CH–429, 2–CH- 517, LT–5282, LT–206, and LT–208 are single train components. The licensee further stated that the worst case tray arrangement is the common tray for components 2–CH–429, 2–CH–517, LT–206, LT–208 and LT–5282. The licensee further stated that there is a moderate likelihood that a fire can occur which will impact components 2–CH–429, 2–CH–517, LT–206, LT–208 or LT–5282.

The licensee stated that cables of concern in the 480 V MCC B61 and B41A enclosures are the power, indication and control cables for valves 2–CS–13.1B and 2–CH–429.

The licensee stated that valve 2–CH–429 is located in the north and west side of the West Piping Penetration Room, near the containment building wall and that the power and indication cabling for this valve is routed via conduit into a cable tray located along the west wall of the room. The licensee also stated that there is likely no fire that can occur which will impact valve 2–CH–429 due to configuration, combustible loading and ignition sources, however, if there was an impact, the nature of the cables would fail the valve in the desired open position.

The licensee stated that the cables of concern in the West Electrical Penetration Area service valves 2–CH–429 and 2–CH–517, and level transmitters LT–206, LT–208 and LT–5282. The licensee also stated that it is very unlikely that a fire can occur which will impact valves 2–CH–429 or 2–CH–517 due to configuration, combustible loading, and ignition sources and that analysis indicates there is a low likelihood that a fire will impact LT–206, LT–208 and LT–5282.

The licensee stated that a fire in the West Penetration Area, MCC B61, and the Facility Z2 Upper 4.16 kV Switchgear Room and Cable Vault will affect all Facility Z2 shutdown components, that Facility Z1 is used to achieve and maintain Hot Standby, and that an Abnormal Operating Procedure (AOP) is used to achieve plant shutdown to Hot Standby. The licensee also stated that for a fire in fire area R–2, OMAs are required to provide for Decay Heat Removal and to restore Charging system flow to the RCS.

3.1.4 OMAs Credited for a Fire in This Area

3.1.4.1 Auxiliary Feedwater (AFW) Flow

3.1.4.1.1 OMA 12—Pull Control Power Fuses and Ensure Breaker A305 Is Open

The licensee stated that in order to establish AFW flow, Bus 24C is credited to provide power from H7A ("A" EDG) to P9A ("A" Motor Drive Auxiliary Feedwater Pump (MDAFW)) and that calculations conclude that AFW flow must be established within 45 minutes. The licensee also stated that cable damage may result in a loss of remote breaker control capability for A305, which is the Bus 24C to Bus 24E cross-tie breaker and that at A305 (Bus 24C), the OMA is to de-energize the breaker control circuit by pulling control power fuses and ensuring that the breaker is open which prevents spurious closure of A305. The licensee further stated that this step establishes AFW flow and provides for a 36 minute time margin on the 45 minute time requirement and that after AFW flow is established, the atmospheric dump valves (ADVs) are utilized to remove decay heat. The licensee further stated that prior to this, RCS decay heat removal is provided by utilizing the Main Steam Safety Valves (MSSVs) and that steaming through the MSSVs is also acceptable after AFW flow is established but utilizing the ADVs, with 2–MS–190A credited for the fire in fire area R–2, is required for initiating the transition to Cold Shutdown.

3.1.4.1.2 OMA 10—Operate Valve 2–MS–190A To Transition From MSSVs

The licensee stated that valve 2–MS–190A fails due to a postulated loss of IA and its cables are not impacted by fire. The licensee also stated that PEO–2, will remain with the ADV to modulate steam flow per direction from the CR. Although this OMA is completed in 10 minutes, since the OMA is conducted after AFW flow and before charging system flow is established, there is no minimum required completion time.

3.1.4.1.3 OMA 20—Obtain Condensate Storage Tank Level at Local Level Indicating Switch LIS–5489A

The licensee stated that the remaining decay heat removal function is to locally monitor CST level (LIS–5489) which is not a short-term requirement because there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that this activity will likely be repeated several times over the course of placing the plant in Cold Shutdown.

3.1.4.2 Charging System Flow

3.1.4.2.1 OMAs 2 and 6—Open Valve 2–CH–429 To Establish Charging Pump Flow Path and Open Breaker to Fail Valve 2–CH–517 Closed

The licensee stated that the Charging System has several OMAs to reestablish flow within the three hour required timeframe and that to initially restore charging, valve 2–CH–429 is opened or verified open (OMA 2), and valve 2–CH–517 (OMA 6) is closed. The licensee stated that valve 2–CH–429 is a MOV located in the fire area and will be locally manually operated postfire and that it has been evaluated with respect to the guidance contained in NRC IN 92–18. The licensee stated that valve 2–CH–517 is an AOV that fails closed and is located in containment. The licensee further stated that the OMA is to de-energize the power supply (DV20) and fail the valve closed and that once 2–CH–429 is manually opened, Charging can be reestablished. The licensee further stated that assuming 60 minutes before being allowed into the fire affected area, the Charging flow path can be established within 64 minutes and Charging flow within 66 minutes which provides 114 minutes of margin on the 180 minute required time.

3.1.4.2.2 OMAs 18 and 19—Obtain BAST Level at Local Level Indicator LI–206A and Obtain BAST Level at Local Level Indicator LI–208A

The licensee stated that due to fire cable damage, both LT–206 and LT–208 are not available from the CR and that both BAST levels require OMAs for local level indication at LI–206A (OMA 18) and LI–208A (OMA 19). The licensee also stated that both indicators are outside the R–2 fire area and that the action is considered part of the restoration for the Charging system and as such, this action is not required until the three hour timeframe.

3.1.4.2.3 OMAs 1 and 8—Open Valve 2–CH–192 and Open Valve 2–CS–13.1B

The licensee stated that after Charging is restored, there are OMAs to switch the Charging suction path from the BASTs to the RWST which requires opening valves 2–CH–192 (OMA1) and 2–CS–13.1B (OMA 8). The licensee also stated that the 2–CH–192 valve is an AOV which may have failed closed due to a loss of IA and that it has a safety-related air accumulator which provides sufficient air to stroke open the valve and maintains it open for three hours and that after the air accumulator is exhausted, the valve will fail closed and an OMA is required to establish/maintain RWST flow to the Charging system.

The licensee stated that valve 2–CS–13.1B is a MOV which may spuriously close due to fire cable damage and that it has to be manually opened in the field prior to switching over to the RWST. The licensee also stated that based on requirements in the technical requirements manual (TRM), the BASTs can supply Charging for more than 72 minutes, at which time the Charging pump suction source is shifted to the RWST.

3.1.4.3 OMA Timing

The OMA to establish AFW flow can be completed in 9 minutes which provides a 36 minute margin since the required completion time is 45 minutes. The OMA to monitor CST level can be completed in 12 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMAs to establish Charging system flow from the BASTs can be completed in 66 minutes which provides a 114 minute margin since the required completion time is 180 minutes. The OMAs to establish Charging system flow from the RWST prior to BAST depletion can be completed in 40 minutes which provides a 32 minute margin since the required completion time is 72 minutes.

3.1.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and automatic fire suppression (West Cable Vault), it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safety shutdown equipment and be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.2 Fire Area R–4, Charging Pump Room, Degasifier Area

3.2.1 Fire Prevention

The licensee stated that the Charging Pump Room has low combustible loading that includes small amounts of lube oil and that potential ignition sources include electrical faults, pump motors, mechanical failure, and hot surfaces.

The licensee stated that the Degasifier Area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.2.2 Detection, Control, and Extinguishment

The licensee stated that the Charging Pump Room is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. A fixed water curtain is provided at the entrance to the Degasifier Area (FHA Fire Zone A–6B), which provides protection for the Charging Pump area from a fire in the Reactor Building Closed Cooling Water System (RBCCW) Pump and Heat Exchanger Area (FHA Fire Zone A–1 B). The licensee also stated that actuation of this system results in an alarm (waterflow) at the main fire alarm panel in the CR. The licensee further stated that a fire in the Charging Pump cubicles that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a Charging Pump failure and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and that each charging pump contains just over 10 gallons of lube oil which could also serve as a pilot ignition source for cable insulation in the event of a pump/motor failure with the resultant ignition of the lube oil. The licensee further stated that based on the elevated ignition temperature of the lube oil and the low probability of a pump/motor assembly failure with subsequent ignition of the entire quantity of lube oil, it is unlikely that a lube oil fire from a Charging Pump failure would serve as an ignition source for IEEE 383 qualified cable insulation. The licensee further stated that curbs are installed between each Charging Pump to protect each pump from a combustible liquid spill within a neighboring Charging Pump cubicle. The licensee further stated that a fire would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

The licensee stated that the Degasifier Area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR and that a fixed water curtain is provided at the entrance to this area and serves to provide protection for the Charging Pump Room (FHA Zone A–6A) from a fire in the RBCCW Pump and Heat Exchanger Area (FHA Zone A–1 B). The licensee also stated that actuation of this system results in an alarm (waterflow) to the main fire panel in the CR. The licensee further stated that a fire in the Degasifier Area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.2.3 Preservation of Safe Shutdown Capability

The licensee stated that the cables of concern in the Charging Pump Room are for control and indication of valve 2–CH–192 and that analysis indicates there is a low likelihood that a fire can occur which will impact the valve. The licensee stated that the cables of concern for the Degasifier Area pass through the hallway leading into the area and are for control and indication of valve 2–CH–192 and that analysis indicates there is a very low likelihood that a fire can occur which will impact valve 2–CH–192.

The licensee stated that a fire in the Charging Pump cubicles will affect the Charging Pumps and several suction valves and that the compliance strategy relies on re-routing of Facility Z2 control and power cables for P18B and

Facility Z2 power cable for P18C from the pump cubicles to outside of fire area R–4. The licensee also stated that an exemption provides technical justification of survivability of at least one Charging Pump following a fire in this area, even though the requirements of III.G.2 are not met. The licensee further stated that survivability is justified based on existing physical spatial separation, partial height missile walls, curbing between pumps, and low intervening combustibles and that plant shutdown can be accomplished using an AOP. The licensee further stated that OMAs are required to provide for decay heat removal and to restore Charging system flow to the RCS.

3.2.4 OMAs Credited for a Fire in This Area

3.2.4.1 AFW and Charging System Flow

3.2.4.1.1 OMAs 1 and 11 Open Valve 2–CH–192 and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that establishing AFW flow to the credited steam generator (SG) is required to be accomplished within 45 minutes and that the required flow path utilizes the turbine driven auxiliary feedwater (TDAFW) pump. The licensee also stated that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs and that after AFW is established from the CR, operation of the ADV (2–MS–190B) (OMA 11) is the required method of removing decay heat to maintain Hot Standby and transition to Cold Shutdown. The licensee further stated that there is no cable damage from fire to the required ADV (2–MS–190B), however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee stated that upon a loss of air, the ADV will fail closed and that this design prevents excessive RCS cooldown prior to AFW start and, therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that after restoration of the Charging system, the BASTs are credited for maintaining RCS inventory and that the BASTs have a minimum level specified in the TRM which ensures 72 minutes of flow. The licensee further stated that once the BASTs are depleted, Operators switch over to the RWST. The licensee further stated that due to fire damage, the 2–CH–192 valve may spuriously close and that in order to establish the RWST as the suction path for the Charging system, an OMA is required to open valve 2–CH–192 (OMA 1) prior to BAST depletion. The licensee further stated that OMA 1 is performed in the fire affected area and is performed after the fire is extinguished and after the Station Emergency Response Organization (SERO) is fully staffed. OMA 1 establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established which takes 17 minutes. The BASTs have a minimum TRM specified inventory to ensure 72 minutes of flow and OMA 1 can be completed in 32 minutes which results in 40 minutes of margin.

3.2.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.2.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and water curtain, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.3 Fire Area R–5, "A" Safeguards Room (Containment Spray and High Pressure Safety Injection/Low Pressure Safety Injection Pump Room)

3.3.1 Fire Prevention

The licensee stated that the area has low combustible loading that includes cable insulation and small amounts of lube oil and that potential ignition sources include electrical faults, pump motors, mechanical failure, and hot surfaces.

3.3.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that a fire in this area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure. Combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this fire area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and that while lube oil could also serve as a pilot ignition source for cable insulation, the small quantities of lube oil would result in a low intensity fire and based on the elevated ignition temperature of the lube oil and the low probability of a pump and/or motor assembly failure with subsequent ignition of the entire quantity of lube oil, it is unlikely that a lube oil fire from a pump and/or motor failure would serve as an ignition source for IEEE 383 qualified cable insulation. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.3.3 Preservation of Safe Shutdown Capability

The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure and that some Shutdown Cooling system components would be affected and that plant shutdown to Hot Standby can be accomplished using existing AOPs.

3.3.4 OMAs Credited for a Fire in This Area

3.3.4.1 AFW and Charging System Flow

3.3.4.1.1 OMAs 1 and 10—Open Valve 2–CH–192 and Operate Valve 2–MS–190A

The licensee stated that for a fire in fire area R–5, two OMAs are identified to provide for decay heat removal and restore charging system flow to the RCS, with the first OMA (OMA 10) being to open and modulate 2–MS–190A (ADV) and the second OMA (OMA 1) being to open valve 2–CH–192. The licensee also stated that both OMAs are needed to compensate for a postulated loss of IA

and that neither valve will experience cable damage due to a fire in fire area R–5. The licensee further stated that the ADVs are utilized after AFW flow is established and that AFW is required to be established within 45 minutes and prior to this, RCS decay heat removal is provided by utilizing the MSSVs. The licensee further stated that steaming through the MSSVs is also acceptable after AFW flow is established, but utilizing the ADVs, with 2–MS–190A credited for a fire in fire area R–5, is required for maintaining the plant in Hot Standby and initiating the transition to Cold Shutdown. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that PEO–1 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS. The licensee further stated that 2–CH–192 is an AOV which may have failed closed due to a loss of IA and that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours and that after the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the Charging system and the BASTs have a minimum level specified in the TRM which ensures Charging flow for more than 72 minutes, at which time Charging pump suction is shifted to the RWST. The licensee further stated that calculations indicate that the Charging system must be restored within three hours, therefore, the accumulator capacity and the minimum TRM BAST level requirement require the OMA to locally open 2–CH–192 be accomplished within three hours (prior to the air accumulator being exhausted).

3.3.4.2 OMA Timing

AFW flow is established within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.3.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.4 Fire Area R–6, "B" Safeguards Room (Low Pressure Safety Injection Pump Room)

3.4.1 Fire Prevention

The licensee stated that the area has low combustible loading that includes cable insulation and small amounts of lube oil and that potential ignition sources include electrical faults, pump motors, mechanical failure, and hot surfaces.

3.4.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this fire area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and that while lube oil could also serve as a pilot ignition source for cable insulation, the small quantities of lube oil would result in a low intensity fire and based on the elevated ignition temperature of the lube oil and the low probability of a pump and/or motor assembly failure with subsequent ignition of the entire quantity of lube oil, it is unlikely that a lube oil fire from a pump and/or motor failure would serve as an ignition source for IEEE 383 qualified cable insulation. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.4.3 Preservation of Safe Shutdown Capability

The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a lube oil fire resulting from a pump and/or motor failure, that some Shutdown Cooling System components would be affected, that Hot Standby equipment will not be affected, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.4.4 OMAs Credited for a Fire in This Area

3.4.4.1 AFW and Charging System Flow

3.4.4.1.1 OMAs 1 and 10—Open Valve 2–CH–192 and Operate Valve 2–MS–190A

The licensee stated that for a fire in fire area R–6, two OMAs are identified, the first OMA (OMA 10) which is to open 2–MS–190A (ADV) and the second OMA (OMA 1) which is to open 2–CH–192. The licensee also stated that both OMAs are needed to compensate for a postulated loss of IA and that neither valve will experience cable damage due to a fire in fire area R–6. The licensee further stated that the ADVs are utilized after AFW flow is established, that AFW is not fire impacted, is required to be established within 45 minutes, and that prior to this, RCS decay heat removal is provided by steaming through the MSSVs which is also acceptable after AFW flow is established. Utilizing the ADVs, with 2–MS–190A credited for a fire in fire area R–6, is required for maintaining the plant in Hot Standby and initiating the transition to Cold Shutdown. The licensee further stated that PEO–2 will remain with the ADV to modulate steam flow per direction from the CR and that PEO–1 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS and that 2–CH–192 is an air operated valve which may have failed closed due to a loss of IA. The licensee further stated that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours and that after the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the charging system and that the BASTs have a minimum level specified in the TRM which ensures charging flow for more than 72 minutes, at which time charging pump suction is shifted to the RWST and that

calculations indicate that the Charging system must be restored within three hours, and therefore, the accumulator and the minimum TRM BAST level requirement require the OMA to locally open 2–CH–192 be accomplished within three hours (prior to the accumulator being exhausted).

3.4.4.2 OMA Timing

AFW flow is established within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.4.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.5 Fire Area R–7, "A" Diesel Generator Room

3.5.1 Fire Prevention

The licensee stated that the area has high combustible loading that includes diesel fuel and small amounts of lube oil and that potential ignition sources include motors, mechanical failure, and hot surfaces.

3.5.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with automatic pre-action sprinkler protection to provide automatic suppression in/around the diesel generator as well as to provide cooling to the structural steel overhead and that the deluge valve for this system is opened by the installed heat detection system. The licensee also stated that the detection system alarms at the main fire alarm panel in the CR while the pre-action sprinkler system alarms at a local panel and at the main fire alarm panel in the CR.

The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve diesel fuel oil and/or lube oil resulting from a mechanical failure of the diesel generator or cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire involving Class A combustibles occurring which could act as a pilot ignition source for the cable insulation and that while a fuel oil or lube oil fire could serve as a pilot ignition source to the cabling, it is expected that a fire involving Class B combustibles (flammable/combustible liquids) would be rapidly detected by the installed heat detection system and be suppressed by the installed suppression system and/or manual firefighting. The licensee further stated that the heat detection system would also aid in providing prompt Fire Brigade response were a fire to occur in this area.

3.5.3 Preservation of Safe Shutdown Capability

The licensee stated that the components of concern for the area are valves 2–CH–192, 2–CH–508, and 2–CH–509 and that the loss of the EDG results in the loss of the Facility Z1 emergency power supply which results in the loss of power to the battery charger supplying the battery for valve 2–CH–192. The licensee also stated that the loss of the Facility Z1 emergency power causes the loss of power to valves 2–CH–508 and 2–CH–509 and that a fire could also cause the failure of IA which would impact valves 2–CH–192 and 2–MS–190B.

The licensee stated that a fire in the area will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.5.4 OMAs Credited for a Fire in This Area

3.5.4.1 AFW and Charging System Flow

3.5.4.1.1 OMA 11—Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that for a fire in the area, OMAs are required to provide decay heat removal and restore Charging system flow to the RCS, that AFW flow must be established to the credited SG within 45 minutes, and that the required AFW flow path utilizes the TDAFW pump which is not fire impacted. The licensee also stated that once AFW flow is established from the CR, operation of an ADV (2–MS–190B) (OMA 11) is the method of removing decay heat to maintain the plant in Hot Standby and for initiating the transition to Cold Shutdown and that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs. The licensee further stated that there is no cable damage from a fire in the area to the required ADV (2–MS–190B), however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee further stated that upon a loss of IA, the ADV will fail closed and this "fail to closed" design prevents excessive RCS cooldown prior to AFW start, and therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW is established and that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR.

3.5.4.1.2 OMAs 4, 5, and 1—Open Valve 2–CH–508, Open Valve 2–CH–509, and Open Valve 2–CH–192

The licensee stated that for a fire in the area the Charging system has OMAs identified and that the BASTs gravity feed valves, 2–CH–508 (OMA 4) and 2–CH–509 (OMA 5), may fail as is (closed) due to a loss of power supply. The licensee also stated that an OMA is in place to locally open the valves as part of restoring the Charging system and that once these valves are opened, the CR can establish charging flow within 2–3 minutes. The licensee further stated that establishing pump suction from the BASTs and restoring charging is required within three hours of reactor shutdown/loss of charging and charging is re-established within 24 minutes (21 minutes to open BASTs valves and 3 minutes to establish charging flow in the CR) which provides a 156 minute margin. The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch the charging suction flow path to the RWST and the 2–CH–192 (OMA 1) valve is required to be open to accomplish the switch over. The licensee further stated that evaluations conclude that the BASTs will last a minimum of 72 minutes after charging is re-established. The licensee stated that valve 2–CH–192 fails closed in the event of a loss of its power supply and/or IA, but valve 2–CH–192 will remain operable using its backup air source until it and/or the Facility Z1 battery is depleted and that the backup air source is capable of opening the valve and maintaining it open for three hours. The licensee further stated that battery depletion will

not occur prior to exhausting the backup air source and that the OMA is not required prior to this time.

3.5.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the BASTs can be completed in 24 minutes which provides a 156 minute margin since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.5.5 Conclusion

Although a fuel oil or lube oil fire could serve as a pilot ignition source to cabling, it is expected that such a fire would be detected by the installed heat detection and controlled by the suppression system with additional suppression provided by manual firefighting, therefore, it is unlikely that a fire would occur and go undetected or unsuppressed and damage safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.6 Fire Area R–8, "B" Diesel Generator Room

3.6.1 Fire Prevention

The licensee stated that the area has high combustible loading that includes diesel fuel oil, small amounts of lube oil, and negligible amounts of cable insulation and that potential ignition sources include electrical faults, motors, mechanical failure and hot surfaces.

3.6.2 Detection, Control, and Extinguishment

The licensee stated that this area is provided with automatic pre-action sprinkler protection to provide automatic suppression in/around the diesel generator as well as to provide cooling to the structural steel overhead and that the deluge valve for this system is opened by the installed heat detection system. The licensee also stated that the detection system alarms at the main fire alarm panel in the CR while the pre-action sprinkler system alarms at a local panel and at the main fire alarm panel in the CR. The licensee stated that a fire in the area that could potentially impact any cables of concern would likely involve diesel fuel oil and/or lube oil resulting from a mechanical failure of the diesel generator or cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire involving Class A combustibles occurring which could act as a pilot ignition source for the cable insulation and that while a fuel oil or lube oil fire could serve as a pilot ignition source to the cabling, it is expected that a fire involving Class B flammable/combustible liquids would be rapidly detected by the installed heat detection system and be suppressed by the installed suppression system and/or manual firefighting. The licensee further stated that the heat detection system would also aid in providing prompt Fire Brigade response were a fire to occur in this area.

3.6.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to failure of the "B" EDG resulting in the loss of power to breakers 24D, 22F and MCC B61, and the battery charger resulting in the depletion of the "B" battery and that a fire in this area could also cause the failure of IA.

The licensee stated that a fire in the area will affect all Facility Z2 shutdown components, that Facility Z1 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished by using an AOP.

3.6.4 OMAs Credited for a Fire in This Area

3.6.4.1 AFW and Charging System Flow

3.6.4.1.1 OMAs 10 and 1—Operate Valve 2–MS–190A and Open Valve 2–CH–192

The licensee stated that for a fire in the area, two OMAs are identified, the first OMA (OMA 10) is to open 2–MS–190A (ADV) and the second OMA (OMA 1) is to open 2–CH–192. The licensee also stated that both OMAs are required to compensate for a postulated loss of IA and that neither valve will experience cable damage due to a fire in the area. The licensee further stated that the ADVs are utilized after AFW flow is established, that AFW is not fire impacted, is required to be established within 45 minutes and that prior to this, RCS decay heat removal is provided by steaming through the MSSVs which is also acceptable after AFW flow is established. The licensee further stated that utilizing the ADVs, with 2–MS–190A credited for the fire in the area, is required for maintaining the plant in Hot Standby and initiating the transition to Cold Shutdown, that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR and that PEO–2 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS. The licensee further stated that 2–CH–192 is an AOV which may have failed closed due to a loss of IA, that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours and that after the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the Charging system and the BASTs have a minimum level specified in the TRM which ensures Charging flow for more than 72 minutes, at which time Charging Pump suction is shifted to the RWST. The licensee further stated that calculations indicate that the Charging system is to be restored within three hours, therefore, the accumulator and the minimum TRM BAST level requirement require the OMA to locally open 2–CH–192 within three hours (prior to the accumulator being exhausted).

3.6.4.1.2 OMA 20—Obtain CST Level at Local Level Indicating Switch LIS–5489A

In their letter dated February 29, 2012 the licensee added OMA 20 to the exemption request for fire area R–8. The licensee stated that a fire in the area could cause a loss of the "B" EDG resulting in the depletion of the "B" battery after 480 minutes causing a loss of level transmitter LT–5282 (CST Level) which will necessitate obtaining level readings locally at the tank using level indicator LIS–5489 (OMA 20). The licensee also stated that the route to the CST is illuminated by emergency lighting units (ELUs), that checking the level of the CST supports AFW system operation and checking the level is not a short-term requirement as there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that if necessary, after the CST is depleted, Operators can switch over to the fire water system and maintain flow to the AFW system.

3.6.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to check CST level can be completed in 6 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.6.5 Conclusion

Although a fuel oil or lube oil fire could serve as a pilot ignition source to cabling, it is expected that such a fire would be detected and suppressed by the installed heat detection and suppression system with additional suppression provided by manual firefighting, therefore, it is unlikely that a fire would occur and go undetected or unsuppressed and damage safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.7 Fire Area R–9, "A" East DC Equipment Room

3.7.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.7.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with a cross-zoned ionization and photoelectric smoke detection system that activates a total flooding Halon 1301 fire suppression system and that the Halon 1301 suppression system has manual release stations at each doorway and an abort switch located at the doorway to the east CR/cable vault stairway. The licensee also stated that this system alarms locally at the Halon control panel and at the main fire alarm panel in the CR. The licensee further stated that duct smoke detection is provided between this area, the "B" (West) DC Equipment Room (FHA Zone A–21), and the auxiliary building cable vault (FHA Zone A–24) and that this system alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of a bus or electrical panel located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a bus/electrical panel failure, which could act as a pilot ignition source for the cable insulation and that a bus/electrical panel failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire in this area, it would be rapidly detected by the cross-zoned ionization and photoelectric smoke detection system and subsequently extinguished by the total flooding Halon 1301 suppression system and that the smoke detection system would also aid in providing prompt Fire Brigade response.

3.7.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to loss of power to the "A" DC buses (such as DV10) and that cables for valves 2–CH–192, 2–CH–508, and 2–CH–509 do not pass through this room.

The licensee stated that a fire in the area will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.7.4 OMAs Credited for a Fire in This Area

In their letter dated February 29, 2012 the licensee deleted OMAs 1 and 11 from the exemption request for fire area R–9 since loss of IA is no longer postulated.

3.7.4.1 AFW and Charging System Flow

3.7.4.1.1 OMAs 4 and 5.—Open Valve 2–CH–508 and Open Valve 2–CH–509

The licensee stated that for a fire in fire area R–9, the Charging system has OMAs identified and that the BASTs gravity feed valves, 2–CH–508 (OMA 4) and 2–CH–509 (OMA 5), may fail as is (closed) due to a loss of power supply. The licensee also stated that an OMA is in place to locally open the valves as part of restoring the Charging system and that once these valves are opened, the CR can establish charging flow within 2–3 minutes. The licensee further stated that establishing charging pump suction from the BASTs and restoring charging is required within three hours of reactor shutdown/loss of charging and that Charging is re-established within 24 minutes (21 minutes to open the BASTs valves and 3 minutes to establish charging flow in the CR) which provides a 156 minute margin.

3.7.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period. The OMA to establish Charging system flow from the BASTs can be completed in 24 minutes which provides a 156 minute margin since the required completion time is 180 minutes.

3.7.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and suppression, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.8 Fire Area R–10, "B" West DC Equipment Room

3.8.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.8.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with a cross-zoned ionization and photoelectric smoke detection system that activates a total flooding Halon 1301 fire suppression system and that the Halon 1301 suppression system has manual release stations at each doorway and an abort switch located at the doorway to the "A" (East) DC equipment room (FHA Zone A–20). The licensee also stated that this system alarms locally on the halon control panel and at the main fire alarm panel

in the CR. The licensee further stated that duct smoke detection is provided between this fire area, the "A" (East) DC Equipment Room (FHA Zone A–20), and the AB cable vault (FHA Zone A–24) and that this system alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or failure of a bus or electrical panel located in the room and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a bus/electrical panel failure, which could act as a pilot ignition source for the cable insulation and that a bus/electrical panel failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire in this area, it would be rapidly detected by the cross-zoned ionization and photoelectric smoke detection smoke detection system and subsequently extinguished by the total flooding Halon 1301 suppression system installed in this area. The smoke detection system would also aid in providing prompt Fire Brigade response.

3.8.3 Preservation of Safe Shutdown Capability

The licensee stated that the OMAs associated with a fire in the area are related to loss of power to the "B" AC vital power panels (such as VA20) and that cables for level transmitters LT–206, LT–208 and LT–5282 do not pass through this room.

The licensee stated that a fire in the area will affect all Facility Z2 shutdown components, that Facility Z1 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.8.4 OMAs Credited for a Fire in This Area

In their letter dated February 29, 2012 the licensee deleted OMA 1 and 10 from the exemption request for fire area R–10 since loss of IA is no longer postulated.

3.8.4.1 AFW and Charging System Flow

3.8.4.1.1 OMA 20—Obtain CST Level at Local Level Indicating Switch LIS–5489A

The licensee stated that a fire in area may cause cable damage to level transmitter LT–5282 (CST Level) which will necessitate obtaining level readings locally at the tank using level indicator LIS–5489 (OMA 20). The licensee also stated that the route to the CST is illuminated by ELUs, that checking the level of the CST supports AFW system operation and checking the level is not a short-term requirement as there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that if necessary, after the CST is depleted, Operators can switch over to the fire water system and maintain flow to the AFW system.

3.8.4.1.2 OMAs 18 and 19—Obtain BAST Level at Local Level Indicator LI–206A and Obtain BAST Level at Local Level Indicator LI–208A

The licensee stated that for a fire in the area, the Charging system has OMAs identified and that fire damage to cables may render level transmitters LT–206 and LT–208 (BAST Level) inoperable from the CR which would necessitate BAST level indication being obtained locally via level indicators LI–206A (OMA 18) and LI–206B (OMA 19). The licensee also stated that the TRM requires a minimum level be maintained in the BASTs and that maintaining this level provides a minimum of 72 minutes of charging flow to the RCS after charging is re-established and that calculations indicate that charging must be restored within three hours of a reactor trip.

3.8.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period. The OMA to check CST level can be completed in 6 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMAs to check BAST level can be completed in 12 minutes which provides a 168 minute margin since the required completion time is 180 minutes.

3.8.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection and suppression, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.9 Fire Area R–12, Steam Driven Auxiliary Feedwater Pump Pit

3.9.1 Fire Prevention

The licensee stated that the area has low combustible loading that includes lube oil only, that there is no cable insulation or Class A combustibles located in the area, and that potential ignition sources include electrical faults or the over-heating of a pump bearing.

3.9.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with an ionization smoke detection system which alarms at a local panel and at the main fire alarm panel in the CR. The licensee stated that a fire in the TDAFW Pump Pit that could potentially impact any cables of concern would likely involve a lube oil fire resulting from an auxiliary feedwater pump failure and that lube oil found within the steam driven AFW pump is the only contributing factor to the combustible loading of this area. The licensee also stated that the lube oil is completely enclosed within the pump housing, which would help in preventing ignition of the oil from an external ignition source and that there are no external ignition sources for the lube oil in this room. The licensee further stated that restrictive access to this pump room limits the amount of transient combustibles and ignition sources in this room and in the event of a fire in this room, the low combustible loading would result in a low intensity fire which would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

3.9.3 Preservation of Safe Shutdown Capability

The licensee stated that a fire in the area will affect only the TDAFW pump and its steam supply components, that no other Hot Standby equipment will be affected and the MDAFW pumps may be used to feed the SGs. The licensee also stated that plant shutdown to Hot Standby can be accomplished using existing shutdown procedures.

3.9.4 OMAs Credited for a Fire in This Area

3.9.4.1 AFW and Charging System Flow

3.9.4.1.1 OMA 10—Operate Valve 2–MS–190A and Open Valve 2–CH–192

The licensee stated that for a fire in the area, two OMAs are identified, the first is to open 2–MS–190A (ADV) (OMA 10) and the second is to open 2–CH–192 (OMA 1). The licensee also stated that both OMAs are required to compensate for a postulated loss of IA, that neither valve will experience cable damage due to a fire in the area, and that the ADVs are utilized after AFW flow is established. The licensee further stated that AFW flow is required to be established within 45 minutes and that prior to this, RCS decay heat removal is provided by steaming through the MSSVs which is also acceptable after AFW flow is established. The licensee further stated that utilizing the ADVs, with 2–MS–190A credited for the fire in the area, is required for maintaining the plant in Hot Standby and the transition to Cold Shutdown, and that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR. The licensee further stated that PEO–2 will complete the second OMA by opening 2–CH–192 to establish the RWST as the source of water to the RCS. The licensee stated that 2–CH–192 is an AOV which may have failed closed due to a loss of IA and that the valve has a safety-related air accumulator which supplies sufficient air to stroke open the valve and maintain it open for three hours. After the air accumulator is exhausted, the valve will fail closed. The licensee further stated that the required OMA establishes/maintains RWST flow to the Charging system and that the BASTs have a minimum level specified in the TRM which ensures Charging flow for more than 72 minutes, at which time Charging Pump suction is shifted to the RWST. The licensee further stated that calculations indicate that the Charging system must be restored within 3 hours, therefore, the accumulator capacity and the minimum TRM BAST level requirements require that this OMA be accomplished within three hours (prior to the accumulator being exhausted).

3.9.4.2 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.9.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.10 Fire Area R–13, West 480 V Load Center Room

3.10.1 Fire Prevention

The licensee stated that the area has low combustible loading that predominantly consists of cable insulation and that potential ignition sources include electrical faults.

3.10.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with ionization smoke detection that alarms at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault or a bus failure and that combustibles in the area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a bus failure, which could act as a pilot ignition source for the cable insulation. A bus failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system will aid in providing prompt Fire Brigade response.

3.10.3 Preservation of Safe Shutdown Capability

The licensee stated that the components of concern for the area are for valves 2–CH–192, 2–CH–508, 2–CH–509, 2–FW–43B and 2–MS–190B, breaker A406, H21 (TDAFW speed control circuit), level transmitter LT–5282, P18C ("C" charging pump), SV–4188 (TDAFW steam supply valve) and breaker DV2021.

The licensee stated that a fire in the area will affect Facility Z1 safe shutdown equipment, that the "A" EDG will be unavailable due to a loss of the Facility Z1 power supply for the diesel-room ventilation fan F38A, that Facility Z2 is used to achieve and maintain Hot Standby, and that plant shutdown to Hot Standby can be accomplished using an AOP.

3.10.4 OMAs Credited for a Fire in This Area

In their letter dated February 29, 2012, the licensee deleted OMAs 1, 9, and 11, from the exemption request for fire area R–13 since loss of IA is no longer postulated.

3.10.4.1 AFW Flow

3.10.4.1.1 OMAs 22 and 17—Operate Supply Valve SV–4188 From Panel C10 and Operate Turbine Driven AFW Pump Speed Control Circuit H–21 From Panel C10

The licensee stated that for a fire in the area, OMAs are required to provide decay heat removal and restore Charging system flow to the RCS and that establishing AFW flow to the credited SG is required within 45 minutes. The licensee stated that for a fire in the area, the required AFW flow path utilizes the TDAFW pump and that due to fire induced cable damage, AFW turbine steam supply valve (SV–4188) (OMA 22), and TDAFW turbine speed control (H21) (OMA 17) may not be available from the CR. The licensee further stated that the cable damage can be isolated and the TDAFW pump can be operated from the Fire Shutdown Panel (C–10) located in fire area R–2 and that an OMA is necessary to isolate the damaged cables and operate the TDAFW turbine speed control to maintain level in the SG. The licensee stated that in the case of 2–FW–43B, cable damage could result in spurious operation and that isolation of the affected cables and control of the valve can be accomplished at the C–10 panel, and that control of SG water level can be maintained using the speed control function of the TDAFW pump. The licensee further stated that the timeframe to establish control of TDAFW at the C–10 panel is 45 minutes and that after Reactor Operator 1 (RO–1) has established control of TDAFW pump speed at the C–10 panel (8 minutes), it will take an additional 2

minutes to establish AFW flow which results in a total time to establish AFW flow of 10 minutes, leaving a 35 minute margin.

3.10.4.1.2 OMA 20—Obtain CST Level at Local Level Indicating Switch LIS–5489A

The licensee stated that valves 2–MS–190B and 2–FW–43B can be operated from the C–10 panel and that the OMA for local or C–10 operation of 2–MS–190B is not required until after AFW flow is established and that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR. The licensee further stated that the final decay heat removal function is to monitor CST level from either the C–10 panel (LT–5282) or locally at the CST (LIS–5489) (OMA 20) and that checking the level is not a short-term requirement because there is sufficient inventory in the CST to provide over 10 hours of water flow to the AFW system. The licensee further stated that a spurious start of the TDAFW coupled with 2–FW–43B failing open should not result in a SG overfill and that the nominal water level in the SG is maintained between 60–75% as indicated on the Narrow Range (NR) level instruments (i.e. the normal operating band). The licensee further stated that from the top of the normal operating band, more than 8000 gallons of water can be added before reaching 100 percent on the NR level instruments and allotting 8 minutes to establish operations from the C–10 panel and assuming all the flow from the TDAFW is filling one SG, approximately 4800 gallons can be added before regaining level control. The licensee further stated that there is also an additional 14,000 gallons of margin available before the SG would overfill (i.e. from 100 percent NR to the Main Steam nozzle).

3.10.4.2 Charging System Flow

3.10.4.2.1 OMAs 4, 5, 16, 21, and 24—Open Valve 2–CH–508, Open Valve 2–CH–509, Pull Control Power Fuses for Breaker A406 and Ensure Breaker Is Open, Operate Pump P18C From Panel C10, and Locally Close Breaker DV2021

The licensee stated that for a fire in the area, the Charging system has OMAs identified. The BASTs gravity feed valves, 2–CH–508 and 2–CH–509, may fail as is, (closed) due to cable damage and that OMAs are (OMA 4 and 5) in place to locally open these valves as part of restoring the Charging system. The licensee further stated that cable damage due to fire may also cause a spurious start of the P18C Charging Pump and that cable damage may be mitigated by isolating and operating P18C (OMA 21) at the C–10 panel. The licensee further stated that RO–1 is at C–10 and must manipulate the controls for P18C and that establishing pump suction from the BASTs and operating P18C is required within 3 hours of reactor shutdown/loss of Charging. The licensee further stated that completing the OMAs to re-establish Charging would take 23 minutes leaving a margin of 157 minutes, which includes the parallel actions of PEO–2 establishing control of Bus 24D (by pulling control power fuses to circuit breaker A406 (OMA 16), ensuring A406 is open and closing breaker DV2021 (OMA 24) and PEO–3 (by manually aligning valves 2–CH–508 and 2–CH–509). The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch Charging Pump suction over to the RWST and valve 2–CH–192 may fail closed due to a loss of power supply, but it can be controlled from the CR.

3.10.4.4 OMA Timing

The OMAs to establish AFW flow can be completed in 10 minutes which provides a 35 minute margin since the required completion time is 45 minutes. The OMA to check CST level can be completed in 3 minutes and is a long term action as the CST provides over 10 hours of inventory to AFW. The OMAs to establish Charging system flow from the BASTs can be completed in 23 minutes which provides a margin of 157 minutes since the required completion time is 180 minutes.

3.10.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.11 Fire Area R–14, Lower 6.9 and 4.16 kV Switchgear Room, East Cable Vault

3.11.1 Fire Prevention

The licensee stated that the areas have low combustible loading that predominantly consists of cable insulation and Thermo-Lag fire resistant wrap, and that potential ignition sources include electrical faults.

3.11.2 Detection, Control, and Extinguishment

The licensee stated that the Lower 6.9 and 4.16 kV Switchgear Room contains ionization smoke detectors located directly over each switchgear cabinet that alarm at the main fire alarm panel in the CR. The licensee also stated that a fire in the Lower 6.9 and 4.16 kV Switchgear Room that could potentially impact cables of concern would likely involve cable insulation resulting from an electrical fault in one of the cable trays routed over Bus 24E or failure of Bus 24E itself. Combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire occurring, outside of a switchgear failure, which could act as a pilot ignition source for the cable insulation and that a switchgear failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. The licensee further stated that in the unlikely event of a fire, it would be rapidly detected by the ionization smoke detection system installed in the area and that the smoke detection system, which consists of an ionization smoke detector located directly over each switchgear cabinet in the area, will aid in providing prompt Fire Brigade response.

The licensee stated that the East Cable Vault is provided with an automatic wet-pipe sprinkler system designed to protect structural steel and an ionization smoke detection system that alarms at the main fire alarm panel in the CR. The licensee also stated that the vertical cable chase that leads down the AB cable vault is protected by an automatic deluge spray system which is actuated by a cross-zoned smoke detection system that alarms at a local panel and at the main fire alarm panel in the CR. The licensee further stated that a fire in the area that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that since there is a minimal amount of Class A combustibles in this area, there is little chance of a fire

occurring which could act as a pilot ignition source for the cable insulation. The licensee further stated that Thermo-Lag, while considered combustible, is one-hour fire rated in this area and that based on its fire resistive qualities and lack of ignition sources, a fire involving Thermo-Lag wrap is not credible. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade. In the unlikely event the fire advanced beyond its incipient stage (unlikely based on type of cable insulation and Fire Brigade suppression activities), it would actuate the installed automatic wet-pipe suppression system provided in this area which will, at a minimum, provide reasonable assurance that a cable tray fire in this area will be controlled and confined to the immediate area of origin.

3.11.3 Preservation of Safe Shutdown Capability

The licensee stated that a fire in the Facility Z1 Lower 4.16 kV Switchgear Room and Cable Vault will affect all Facility Z1 shutdown components, that Facility Z2 is used to achieve and maintain Hot Standby, that plant shutdown to Hot Standby can be accomplished using an AOP and that OMAs are required to provide decay heat removal and restore Charging system flow to the RCS.

The licensee stated that the cables of concern in the East Cable Vault are the control and indication cabling for valve 2–FW–43B. The licensee also stated that cables for valves 2–CH–192, 2–CH–508 and 2–CH–509 are not located in this room, however, valves 2–CH–508 and 2–CH–509 are impacted due to the potential loss of the feed cables for bus 22E or the "A" EDG's control and power cables which results in the loss of power to the valves.

3.11.4 OMAs Credited for a Fire in This Area

In their letter dated February 29, 2012, the licensee deleted OMAs 1, 9 and 11 from the exemption request for fire area R–14 since loss of IA is no longer postulated.

The licensee stated that during verification and validation of the AOPs, it was identified that for a fire in fire area R–14 an additional operator might be necessary to place the plant into hot standby. The staffing requirements for MPS2 were changed to add one licensed or non-licensed operator over the minimum technical specification (TS) requirement to be on duty each shift during Modes 1, 2, 3, or 4, with this operator being designated as the Appendix R operator and is not part of the credited five man Fire Brigade crew.

3.11.4.1 Charging System Flow

3.11.4.1.1 OMAs 4 and 5—Open Valve 2–CH–508 and Open Valve 2–CH–509

The licensee stated that the Charging system has OMAs identified in that the BASTs gravity feed valves, 2–CH–508 and 2–CH–509, may fail as is (closed) due to a loss of power supply and that OMAs are in place (OMA 4 for 2–CH–508 and OMA 5 for 2–CH–509) to locally open these valves as part of restoring the Charging system. The licensee further stated that establishing Charging Pump suction from the BASTs is required within 3 hours of reactor shutdown/loss of Charging and that RO–1 and PEO–3 will perform their OMAs in parallel (see Section 3.11.4.1.2) to restore Charging. OMAs 4 and 5 are completed in 21 minutes.

3.11.4.1.2 OMAs 13, 14, 15, 23, and 24—Pull Control Power Fuses for Breaker A408 and Ensure Breaker Is Open, Pull Control Power Fuses for Breaker A410 and Ensure Breaker Is Open, Pull Control Power Fuses for Breaker A411 and Ensure Breaker Is Open, Pull Control Power Fuses for Breaker A401 and Ensure Breaker Is Closed, and Locally Close Breaker DV2021

The licensee stated that as part of the restoration of Charging flow to the RCS, Bus 24D must be isolated from cross-ties to Bus 24B, Bus 24E and the RSST and that this is due to fire-induced cable damage which may result in spurious operation/loss of control from the CR of breakers A401, A410, A408 and A411. The OMAs associated with these breakers are to pull the control power fuses and ensure that breakers A410 (OMA 14), A408 (OMA 13) and A411 (OMA 15) are open and that breaker A401 (OMA 23) is closed. The licensee also stated that once RO–1 completes the OMAs, PEO–1 will then reset and close breaker DV2021 (OMA 24). OMAs 13, 14, 15, 23 and 24 are completed in 24 minutes, then it will take an additional 3 minutes for the CR to establish Charging flow for a total of 27 minutes which results in a 153 minute margin since the required completion time is 180 minutes.

3.11.4.2 OMA Timing

The OMAs to establish Charging system flow from the BASTs can be completed in 27 minutes which provides for a margin of 153 minutes since the required completion time is 180 minutes.

3.11.5 Conclusion

Given the limited amount of combustible materials and ignition sources and installed detection (Lower 6.9 and 4.16 kV Switchgear Room) and installed detection and suppression (East Cable Vault), it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. The low likelihood of damage to safe shutdown equipment due to a fire in this area, combined with the ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment and to be completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.12 Fire Area R–15, Containment Building

3.12.1 Fire Prevention

The licensee stated that the area has low combustible loading including cable insulation and small amounts of lube oil and that potential ignition sources include electrical faults, motors, mechanical failure, and hot surfaces.

3.12.2 Detection, Control, and Extinguishment

The licensee stated that the area is provided with smoke detection at each of the East and West Electrical Penetration Areas on the 14′–6″ elevation and that the system alarms at a local panel and at the main fire alarm panel in the CR. The licensee also stated that heat detection is provided for each of the Reactor Coolant Pumps (RCPs) and that during refueling outages, the fire protection header within Containment is charged, with hose stations available on all elevations with the exception of the 3′–6″ elevation. The licensee further stated that during normal plant operation, fire protection piping within the Containment is not charged. The licensee further stated that a fire in the Containment that could potentially impact any cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that during plant operation, there are negligible amounts of Class A combustibles in this area, and therefore, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. If a cable fire does occur, it would be rapidly detected by the smoke detection

system installed at the east and west electrical penetration areas on the 14′–6″ elevation of the Containment, alerting the CR to a fire condition in Containment. The licensee further stated that a lube oil fire serving as a pilot ignition source to cable in the Containment is not a realistic scenario, that lube oil in this fire area is predominantly associated with the four RCPs and that while a failure of one of these RCP motors and a subsequent lube oil fire could be postulated, each of the RCP motors (located on the 14′–6″ Elevation of Containment) is partially enclosed in reinforced concrete compartments and the floor beneath the RCPs drains to the lowest elevation of Containment (22′–6″ Elevation). The licensee further stated that cabling in the Containment is routed outside of these concrete compartments along the outer annulus of the Containment and would be shielded from an RCP motor fire. The licensee further stated that based on the large volume of the Containment, the heat and hot gasses generated by an RCP motor lube oil fire would rise to the upper elevations of the Containment away from the cable tray concentrations located at the East and West Electrical Penetration Areas on the 14′–6″ elevation of the Containment. If an RCP motor lube oil fire does occur, it would be detected in its incipient stage by the installed heat detection system that protects the RCP motors, alerting the CR to a fire condition in Containment.

3.12.3 Preservation of Safe Shutdown Capability

The licensee stated that the cables of concern for the Containment are the power and indication cables for valves 2–CH–517 and 2–CH–519.

The licensee stated that a fire in the Containment will affect a significant amount of instrumentation needed to monitor plant parameters and that a review of all instrument cables inside the Containment indicates that compliance with separation criteria was achieved with the exception of the Pressurizer cubicle. The separation issues inside Containment have been evaluated as follows:

1. Separation criteria were evaluated for the Pressurizer cubicle to address instruments LT–11OX, LT–1 10Y, PT–102A, and PT–102B (instruments located on Racks C140 and C211 in the NE quadrant of containment) and instruments PT–103 and PT–103–1.

2. Separation criteria were evaluated for the remainder of the instruments required for safe shutdown (RCS temperature, SG level and pressure, core exit thermocouples, nuclear instruments (NIs), containment temperature) and the sensing lines for the pressurizer level and pressurizer pressure instruments.

The licensee stated that plant shutdown to Hot Standby can be accomplished using an AOP and that for a fire in the area, OMAs are required to provide decay heat removal and restore Charging system flow to the RCS.

3.12.4 OMAs Credited for a Fire in This Area

3.12.4.1 AFW Flow

3.12.4.1.1 OMAs 10 and 11—Operate Valve 2–MS–190A and Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that for decay heat removal, after AFW flow is established from the CR in the required 45 minute time period, Operators will transfer from steaming through the MSSVs to steaming through the ADVs and that for a fire in the area, both ADVs (2–MS–190A and 2–MS–190B) are required. The licensee also stated that operators must first determine which SG instruments are available and that if SG1 instrumentation is available, then 2–MS–190A (OMA 10) ADV will be utilized for the decay heat steam path, and if SG2 instrumentation is available, then the 2–MS–190B (OMA 11) ADV will be utilized for the decay heat steam path. The licensee further stated that neither ADV is fire affected, however, the fire may cause a loss of IA which is required to operate the ADVs to support decay heat removal. The licensee further stated that upon a loss of IA, the ADV will fail closed and that this "fail to closed" design prevents excessive RCS cooldown prior to AFW start. In the event of a loss of IA, operators will establish local manual control of 2–MS–190A or 2–MS–190B after AFW flow is established. The licensee further stated that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR. OMAs 10 and 11 can begin 17 minutes after AFW is established by the CR.

3.12.4.2 Charging System Flow

3.12.4.2.1 OMAs 6 and 7—Open Breaker to Fail Valve 2–CH–517 Closed and Open Breaker to Fail Valve 2–CH–519 Open

The licensee stated that the Charging system OMAs are for possible spurious operation of valves 2–CH–517, 2–CH–518, and 2–CH–519, due to fire-induced cable damage and that these valves are located in Containment. The licensee also stated that PEO–3 opens breakers to place the valves in their required positions and for valve 2–CH–517 (OMA 6), breaker DV2012 is opened which will fail the valve in the closed position and that this breaker manipulation will also fail 2–CH–519 (OMA 7) in its required open position. The licensee further stated that valve 2–CH–518 is not required for a fire in the area, but will be failed open (desired position) when other power circuits are isolated and that once PEO–3 completes the OMA in 7 minutes, it takes approximately 3 additional minutes for the CR to re-establish Charging flow which provides a 170 minute margin.

3.12.4.2.2 OMA 1—Open Valve 2–CH–192

The licensee stated that although not fire affected, valve 2–CH–192 will failed closed after the isolation of power to Containment which will necessitate an OMA (OMA 1) to establish the RWST as the source of water to the RCS once the BASTs are depleted. The licensee also stated that a minimum switch-over time of 72 minutes, after charging has been restored, has been established based on the TRM BAST level requirements and that calculations conclude that the Charging system must be restored within 3 hours, therefore, the initial alignment of 2–CH–517 and 2–CH–519 will take place within 3 hours. The licensee further stated that establishing the RWST as a flow path to the RCS is not required until 1.2 hours after Charging is re-established.

3.12.4.3 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMAs to establish Charging system flow from the BAST can be completed in 10 minutes which provides a margin of 170 minutes since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.12.5 Conclusion

Given the limited amount of combustible materials, ignition sources, installed partial detection, and separation from the RCPs, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel and damage the safe shutdown equipment. There is a low likelihood of damage to safe shutdown equipment due to a fire in this area. The ability of the OMAs to manipulate the plant in the event of a fire that damages safe shutdown equipment, to be

completed with more than 30 minutes of margin, provides adequate assurance that safe shutdown capability is maintained.

3.13 Fire Area R–17, East Electrical Penetration Area, East Main Steam Safety Valve/Blowdown Tank Room, East Piping Penetration Area

3.13.1 Fire Prevention

The licensee stated that the East Electrical Penetration Area has moderate combustible loading that includes cable insulation and small amounts of plastics and that potential ignition sources include electrical faults.

The licensee stated that the East Main Steam Safety Valve/Blowdown Tank Room has low combustible loading that consists entirely of cable insulation and that potential ignition sources include electrical faults.

The licensee stated that the East Piping Penetration Area has low combustible loading that includes Class A combustibles (e.g., rubber) and that potential ignition sources include transient ignition sources (e.g. hotwork).

3.13.2 Detection, Control, and Extinguishment

The licensee stated that the East Electrical Penetration Area is provided with an ionization smoke detection system which alarms at the main fire alarm panel in the CR. The licensee also stated that a fire in the area that could potentially impact a cable of concern would likely involve cable insulation resulting from an electrical fault. The licensee stated that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee further stated that the cable trays in this area are predominantly located towards the southern and eastern end of the room, while the Class A combustibles are located predominantly towards the northern end of the room. Based on the location of the Class A combustibles in relation to the cable trays in this area, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation. Based on the length of the east wall (55 feet), the distance between the cable trays and the Class A combustibles is approximately 45 feet. The licensee further stated that a failure of motor control center (MCC) B–31B could also serve as an ignition source and that an MCC failure normally results in a high intensity fire that lasts for a short duration, which makes it unlikely that it will cause sustained combustion of IEEE 383 qualified cables. In order to impact the subject cable trays, an MCC failure would have to ignite a cable tray located immediately above the MCC. The fire would also have to propagate via the cable tray until it reached any cables of concern. The licensee further stated that based on the discussion above, the postulated fire scenario is highly unlikely. The characteristics of an MCC failure and the fire retardant properties of IEEE 383 cabling also make it implausible that failure of hydrogen analyzers C86 or C87 would result in the ignition of a cable tray located several feet above the analyzers. The heavy construction of the hydrogen analyzer cabinets would further preclude this event. The licensee further stated that in the event of a fire in this area, it would be rapidly detected in its incipient stage by the installed smoke detection system, which will aid in providing rapid response by the Fire Brigade.

The licensee stated that a fire in the East Main Steam Safety Valve/Blowdown Tank Room that could potentially impact the cables of concern would likely involve cable insulation resulting from an electrical fault and that combustibles in this area consist predominantly of IEEE 383 qualified cable insulation or cable that has been tested and found to have similar fire resistive characteristics. The licensee also stated that since the amount of Class A combustibles in this fire area is negligible, there is little chance of a fire occurring which could act as a pilot ignition source for the cable insulation and in the unlikely event of a fire in this fire area, the high ceiling and the large volume of this room would preclude a large rise in temperature in the areas where the subject cable trays or conduits are routed, reducing the likelihood that they would be damaged by the fire.

The licensee stated that the East Piping Penetration Area is not provided with a smoke detection system, however, due to the openings in the ceiling of this area, the ionization smoke detection system located at the ceiling of the east electrical penetration area (FHA Zone A–10B) would provide supplemental coverage to detect a fire in this area. The licensee stated that a fire in the East Piping Penetration Area that could potentially impact any cables of concern would likely involve Class A combustibles from a transient ignition source. Based on the controls placed on transient combustibles and transient ignition sources, it is unlikely a fire would occur in this area. The licensee also stated that all hot work evolutions in the plant are procedurally required to have a fire watch in place. Hot work fire watches are individuals stationed in plant areas for the purpose of fire safety for workers and welders, detecting and suppressing smoke, fire, flames, or sparks as a result of hot work such as welding, cutting, or grinding. If a fire starts as a result of hot work, it would be detected in its incipient stages. The licensee further stated that since the amount of Class A combustibles in this area is small, a fire in this room is unlikely to occur. If a fire did occur, it would be of low intensity and would not likely be of sufficient magnitude to impact cable routed in conduit. The licensee further stated that the high ceiling of this room and the fact that this area opens up to the east electrical penetration area above (FHA Zone A–10B) would preclude a large rise in temperature in the areas where the subject conduits are routed, lessening the likelihood that they would be damaged by the fire.

3.13.3 Preservation of Safe Shutdown Capability

The licensee stated that OMAs associated with a fire in the East Electrical Penetration Area are related to failure of the "A" EDGs power or control cables resulting in the loss of power to buses 24C, 22E, B51 and the battery charger, which results in the depletion of the "A" battery and that a fire in this area could also cause the failure of IA.

The licensee stated that the OMAs associated with a fire in the East Main Steam Safety Valve/Blowdown Tank Room are related to failure of IA and that cables for valves 2–CH–192 and 2–MS–190B do not enter this room.

The licensee stated that in the event of a fire in the East Penetration Area which could affect Facility Z1 shutdown components, Facility Z2 is used to achieve and maintain Hot Standby and that plant shutdown to Hot Standby can be accomplished using an AOP. The licensee also stated that for a fire in the area, OMAs are required to provide decay heat removal and restore charging system flow to the RCS.

3.13.4 OMAs Credited for a Fire in This Area

3.13.4.1 AFW Flow

3.13.4.1.1 OMA 11—Control Valve 2–MS–190B at Panel C10 or Local Manual Operation

The licensee stated that establishing AFW flow to the credited SG is required within 45 minutes and that for a fire in the area, the required AFW flow path utilizes the TDAFW pump. The licensee

also stated that once AFW flow is established from the CR, operation of the ADV (2–MS–190B) (OMA 11) is the required method for maintaining the plant in Hot Standby and transitioning to Cold Shutdown and that prior to AFW initiation, the plant is placed in the Hot Standby condition by steaming through the MSSVs. The licensee further stated that a fire in the area would not damage any cables associated with ADV (2–MS–1 90B), however, the fire might cause a loss of IA which is required to operate the ADVs and support decay heat removal. The licensee further stated that upon a loss of IA, the ADV will fail closed and that this "failed to close" design prevents excessive RCS cooldown prior to AFW start. Therefore, in the event of a loss of IA, Operators will establish local manual control of 2–MS–190B after AFW flow is established. The licensee further stated that PEO–1 will remain with the ADV to modulate steam flow per direction from the CR.

3.13.4.2 Charging System Flow

3.13.4.2.1 OMAs 4, 5 and 1—Open Valve 2–CH–508, Open Valve 2–CH–509, and Open Valve 2–CH–192

The licensee stated that for a fire in the area, the Charging system has OMAs identified as the BASTs gravity feed valves, 2–CH–508 and 2–CH–509, might fail as is (closed) due to a loss of power supply. The licensee also stated that OMAs (OMA 4 and 5) are in place to locally open these valves as part of restoring the Charging system and that once these valves are opened, the CR can establish Charging flow within 2–3 minutes. The licensee further stated that establishing Charging Pump suction from the BASTs is required within 3 hours of reactor shutdown/loss of charging, and Charging is therefore re-established within 24 minutes (21 minutes to open BASTs valves and 3 minutes to establish charging flow from the CR) which provides a 156 minute margin. The licensee further stated that after the BASTs have reached the 10 percent level, Operators switch the charging pump suction over to the RWST and that valve 2–CH–192 will fail closed when DV1013 is opened to mitigate spurious operation of 2–CH–518 and that an OMA is required to open 2–CH–192 (OMA 1) once the BASTs supply to charging is exhausted. The licensee further stated that evaluations conclude that the BASTs will last a minimum of 72 minutes after Charging is re-established and that the OMA is not required to be performed prior to this time.

3.13.4.3 OMA Timing

AFW flow is established from the CR within the required 45 minute time period and should IA be lost, the OMA to continue decay heat removal can be conducted beginning 17 minutes after AFW flow is established. The OMAs to establish Charging system flow from the BAST can be completed in 24 minutes which provides a margin of 156 minutes since the required completion time is 180 minutes. The OMA to establish Charging system flow from the RWST prior to BAST depletion can be completed in 32 minutes which provides a 40 minute margin since the required completion time is 72 minutes.

3.13.5 Conclusion

Given the limited amount of combustible materials and ignition sources, administrative controls, available margin (40 minutes), and installed detection in the East Electrical Penetration Area, it is unlikely that a fire would occur and go undetected or unsuppressed by the personnel, and damage the safe shutdown equipment.

The East Piping Penetration Room has limited combustible materials and ignition sources and lacks credible fire scenarios, but is not provided with detection. However, due to the openings in the ceiling, the detection located in the East Electrical Penetration Area provides some coverage to the East Piping Penetration Room. A fire in this room, although unlikely, would be expected to be of low intensity and not likely to impact cable routed in conduit. In addition, the high ceiling and ceiling openings to the East Electrical Penetration Area would preclude a large rise in temperature reducing the likelihood that cables would be damaged by the fire. The limited amount of combustible materials and ignition sources, administrative controls, and lack of credible fire scenarios, combined with the ability of the OMAs with available margin (40 minutes) to manipulate the plant, in the unlikely event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability can be maintained.

The East Main Steam Safety Valve/Blowdown Tank Room has limited combustible materials and ignition sources and lacks credible fire scenarios, but is not provided with detection. However, since the amount of Class A combustibles is small, there is little likelihood of a fire occurring which could act as a pilot ignition source for the cable insulation. In addition, the high ceiling and the large volume would preclude a large rise in temperature where the cable trays or conduits are routed, reducing the likelihood of cable damage. The limited amount of combustible materials and ignition sources, administrative controls, and lack of credible fire scenarios, combined with the ability of the OMAs with available margin (40 minutes) to manipulate the plant in the unlikely event of a fire that damages safe shutdown equipment, provides adequate assurance that safe shutdown capability can be maintained.

3.14 Feasibility and Reliability of the Operator Manual Actions

In their February 29, 2012 letter, the licensee stated that the means to safely shutdown MPS2 in the event of a fire that does occur and is not rapidly extinguished, as expected, has been documented in the Appendix R Compliance report. The entire Appendix R Compliance report was not reviewed by the NRC as part of this exemption, the relevant information was submitted on the docket in the letters identified above. The sections below outline the licensees basis for the OMA's feasibility and reliability.

NUREG–1852, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire," provides criteria and associated technical bases for evaluating the feasibility and reliability of post-fire OMAs in nuclear power plants. The following provides the MPS2 analysis of these criteria for justifying the OMAs specified in this exemption.

3.14.1 Bases for Establishing Feasibility and Reliability

The licensee stated that in establishing the assumed times for operators to perform various tasks, a significant margin (i.e., a factor of two) was used with respect to the required time to establish the system function for all fire area scenarios identified in the exemption request (with the exception of RWST flow to charging). For example, the Time Critical Action (TCA) to establish AFW flow is validated to be able to be completed within 22.5 minutes, which provides a factor of two margin of the 45 minute timeframe used in the fire scenario analysis.

The licensee stated that confirmation times for valve/breaker manipulations was included in the action time for the OMAs. The licensee also stated that for valves that are operated in the field, if they are being manually opened or closed, there is local indication plus the mechanical stops to confirm valve operation. For valves that are throttled, the field operator is in communication with the CR personnel who monitor

control board indication to confirm the proper response. The licensee further stated that all breakers have local mechanical indication for position verification, that all sequenced steps are coordinated from the CR, and that the OMA times listed include this coordination.

3.14.2 Environmental Factors

The licensee stated that a review of ventilation systems for the fire areas addressed by the exemption request concluded that no credible paths exist that could allow the spread of products of combustion from the area of fire origin to an area that either serves as a travel path for OMAs or is an action location for an OMA. There is an exception for OMA 1 in fire area R–4 which was discussed in section 3.2.4.1.1 (and below). The licensee also stated that the installed ventilation systems are not used to perform smoke removal activity for the fire areas discussed in the exemption request and that smoke evacuation for these areas would be accomplished by the site Fire Brigade utilizing portable mechanical ventilation.

The licensee stated that the performance of all the OMAs for each of the fire areas have specific safe pathways for access and egress and that in all cases, ELUs have been provided to ensure adequate lighting. The licensee also stated that during a fire event, implementation of CR actions ensure the radiation levels along these pathways, and at the location of the OMAs, are within the normal and expected levels.

The licensee stated that area temperatures may be slightly elevated due to a loss of normal ventilation, however, in no case would the temperatures prevent access along the defined routes or prevent the performance of an OMA. The licensee also stated that only OMA 1 could occur in the fire affected area in that a fire in fire area R–4, charging pump cubicle, could impact valve 2–CH–192 requiring the OMA to manually open this valve. The licensee further stated that this action would be delayed until after the fire is extinguished and the area is ventilated and that opening valve 2–CH–192 would not be required until the BASTs are emptied. The licensee further stated that the most limiting time estimate is 72 minutes of Charging system operation injecting the contents of the BASTs based on the tanks being at the TRM minimum level at the start of the event and that during the event. Charging may be lost or secured, and RCS inventory can meet the Appendix R performance goal for 180 minutes. The licensee further stated that analysis indicates that valve 2–CH–192 may not need to be opened until 252 minutes into the event.

The licensee stated that fire barrier deviations that could allow the spread of products of combustion of a fire to an adjacent area that either serves as a travel path for OMAs or is an action location for an OMA have been found to not adversely impact OMA travel paths or action areas.

3.14.3 Equipment Functionality and Accessibility

The licensee stated that as part of the OMA validation process, lighting, component labeling, accessibility of equipment, tools, keys, flashlights, and other devices or supplies needed are verified to ensure successful completion of the OMA.

The licensee stated that for each OMA, the current MPS2 Appendix R Compliance Report indicates that operator access is assured by an alternate path or access is not required until after the fire has been suppressed. Where applicable, the licensee stated that OMAs have sufficient ELUs to provide for access to the particular component and to perform the task.

3.14.4 Available Indications

Indicators and indication cables have been evaluated by the licensee as part of the exemption request process. Where impacts to indication have been identified the licensee provided an alternate method to obtain the needed indication(s).

3.14.5 Communications

The licensee stated that Operators are provided with dedicated radio communication equipment and that the Appendix R communication system utilizes a portion of the MPS 800 MHz trunked radio system which consists of 800 MHz portable radio units, a CR base station transmitter, antennas, a main communication console located inside the CR and redundant repeaters. The licensee also stated that the CR base station transmitter is provided to ensure two-way voice communications with the CR without affecting plant safety systems that may have sensitive electronic equipment located in the area and the resulting design configuration ensures communications capability for all Appendix R fire scenarios.

3.14.6 Portable Equipment

The licensee stated that all equipment required to complete a required action is included in a preventative maintenance program and is also listed in the TRM which identifies surveillances for the equipment utilized in each OMA.

3.14.7 Personnel Protection Equipment

The licensee stated that there are no OMAs required in fire areas identified in the exemption request that necessitate the use of self-contained breathing apparatus. No fire areas necessitate reentry to the area of fire origin other than described in Section 3.2.4.1.1.

3.14.8 Procedures and Training

The licensee stated that entry into AOP 2559, "FIRE" is at the first indication of a fire from a panel alarm or report from the field. If the fire is in an Appendix R area, the shift is directed to determine if a fire should be considered Appendix R by:

1. Identifying actual or imminent damage to safe shutdown components, switchgear, MCCs, cable trays or conduit runs;
2. Observation of spurious operation of plant components needed for safe shutdown;
3. Observation of loss of indication, control, or function of safe shutdown plant systems or components;
4. Observation of conflicting instrument indication for safe shutdown systems or components; or
5. Observation of parameters associated with safe shutdown systems or components not being within expected limits for the existing plant configuration.

The licensee stated that AOP 2559, "FIRE" has various attachments that have Appendix R egress/access routes which provide a safe pathway to reach the required equipment necessary to complete the OMAs and that they have confirmed that the pathways will be free of hazards to the operators due to the subject fire.

The licensee also stated that there is an Appendix R AOP corresponding to each Appendix R fire area, which are entered when an Appendix R fire is declared. Operations personnel train to those AOPs which identify the steps to perform each OMA. The licensee further stated that time critical OMAs are also identified within operating procedures which require that Operations personnel train to perform these time critical activities. The OMAs presented in this exemption request are encompassed in the time critical procedure.

The licensee further stated that the times allotted to perform these tasks are easily achieved by experienced and inexperienced operators during training sessions, evaluated requalification training, and supervised walk downs and that for each case, there is sufficient

margin to account for the uncertainties associated with stress, environmental factors, and unexpected delays.

3.14.9 Staffing

The licensee stated that the Operations shift staffing requirements include one additional licensed or non-licensed operator over the minimum TS requirement to be on duty each shift during Modes 1, 2, 3, or 4, and that this operator is designated as the Appendix R operator and is specified in the TRM. The licensee also stated that the number of individuals available to respond to the OMAs is one RO, two PEOs, and one additional licensed or non-licensed individual (Appendix R Operator). The licensee stated that the exemption request allocated tasks to PEO–1, PEO–2, PEO–3 and RO–1 and that one of the three PEOs would be the TRM required Appendix R Operator. With the exception of the panel C10 activities, the assignments are interchangeable between the four operators, since these individuals are specified by the TS and TRM, they are not members of the Fire Brigade and have no other collateral duties.

The licensee stated that MPS2 has a SERO and appropriate emergency response facilities. In the event of a declaration of an ALERT (events which are in progress or have occurred involving an actual or potential substantial degradation of the level of safety of the plant, with releases expected to be limited to small fractions of the Environmental Protection Agency, Protective Action Guideline exposure levels), ALERT event activates the SERO organization, which is immediately staffed by on-site personnel and is fully established with on-call personnel within 60 minutes of the ALERT being declared. The licensee also stated that after this time, off-shift Operations staff (e.g., personnel in training, performing administrative functions, etc.) may be called in as requested by the SM. The licensee further stated that many of the OMAs are not required prior to the establishment of SERO and that the additional staff available through SERO will improve the reliability of these OMAs.

The licensee stated that operators are required and assumed to be within the Protected Area and that the time lines account for the initial response by the field Operator. The licensee also stated that upon the announcement of a fire, the field Operators are directed to report to the CR and await further directions. Upon a report of a fire, the CR Operators enter AOP 2559, "FIRE." The licensee further stated that the flow path to get into an Appendix R fire scenario is, that upon indication of a fire, the Fire Brigade is dispatched, and based on their report or indications in the CR, an Appendix R fire may be declared. In the development of the time lines, the Operators are allowed 5 minutes to respond and report to the CR.

3.14.10 Demonstrations

In their letter dated February 29, 2012 the licensee provided its validation process for the OMAs included in the exemption request. The validation process included the following: 1. Validation Objectives; 2. Validation Frequency; 3. Validation Methods; 4. Validation Attributes; and 5. Validation Performance.

The licensee stated that all OMAs are encompassed in procedure COP 200.18, "Time Critical Action Validation and Verification" and that an enhancement to the tracking and training on TCAs has been developed and is currently being implemented.

The licensee stated that all of the OMAs identified are contained in the AOPs to respond to an Appendix R Fire in the AOP Series 2579's fire procedures for Appendix R and that during initial validation of these procedures, the OMAs were performed and all of the time performance objectives were met as a result of the validation.

3.14.11 Feasibility Summary

The licensee's analysis demonstrates that, for the expected scenarios, the OMAs can be diagnosed and executed within the amount of time available to complete them. The licensee's analysis also demonstrates that various factors, including the factor of two time margin, the use of the minimum BAST inventory, and the use of the CST inventory, have been considered to address uncertainties in estimating the time available. Therefore, the OMAs included in this review are feasible because there is adequate time available for the Operator to perform the required OMAs to achieve and maintain hot shutdown following a postulated fire event. The following table summarizes the "required" versus "available" times for OMAs with time requirements. Where a diagnosis time has been identified, it is included as part of the required time for a particular action. Where an action has multiple times or contingencies associated with the "allowable" completion time, the lesser time is used. This approach is considered to represent a conservative approach to analyzing the timelines associated with each of the OMAs with regard to the feasibility and reliability of the actions included in this exemption. All OMAs have at least 30 minutes of margin, and all but one have a factor of two time margin available. Margin is based on using the most limiting information from the licensee, for example, if the licensee postulated a range of time for diagnosis, the required time below includes the largest number in the range.

Finally, these numbers should not be considered without the understanding that the manual actions are a fall back in the unlikely event that the fire protection defense-in-depth features are insufficient. In most cases there is no credible fire scenario that would necessitate the performance of these OMAs. The licensee provided a discussion of the activity completion times and associate margins related to the OMAs in their June 30, 2011, and February 29, 2012 letters which are summarized in Table 3.

TABLE 3

Fire Area of Fire Origin	Activity	OMAs	Available time (min)	Time to conduct OMAs (min)	Margin (min)
Fire Area R–2 (West Penetration Area, MCC B61, and the Facility Z2 Upper 4.16kV Switchgear Room and Cable Vault).	Establish AFW Flow	12	45	9	36
	Establish Charging Suction from BAST.	2, 6, 10, 18, 19, 20	180	66	114
	Establish Charging Suction from RWST.	1, 8	72	40	32

TABLE 3—Continued

Fire Area of Fire Origin	Activity	OMAs	Available time (min)	Time to conduct OMAs (min)	Margin (min)
Fire Area R–4 (Charging Pump Cubicles)	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–5 ("A" Safeguards Room, HPSI/LPSI).	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–6 ("B" Safeguards Room, LPSI)	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–7 (Diesel Generator Room A)	Establish Charging Suction from BAST.	4, 5, 11	180	24	156
	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–8 (Diesel Generator Room B)	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–9 (Facility Z1 DC Switchgear Room and Battery Room).	Establish Charging Suction from BAST.	4, 5	180	24	156
Fire Area R–10 (Facility Z2 DC Equipment Room and Battery Room).	Obtain Local BAST Level Indication.	18, 19	180	12	168
Fire Area R–12 (TDAFW Pump Pit)	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–13 (West (Facility Z1) 480 VAC Switchgear Room).	Establish AFW Flow	17, 22	45	10	35
	Establish Charging Suction from BASTs.	4, 5, 16, 20, 21, 24	180	23	157
Fire Area R–14 (Facility Z1 Lower 4.16kV Switchgear Room and Cable Vault).	Establish Charging Suction from BASTs.	4, 5, 13, 14, 15, 23, 24	180	27	153
Fire Area R–15 (Containment Building)	Establish Charging Suction from BASTs.	6, 7	180	10	170
	Establish Charging Suction from RWST.	1	72	32	40
Fire Area R–17 (East Penetration Area)	Establish Charging Suction from BASTs.	4, 5	180	24	156
	Establish Charging Suction from RWST.	1	72	32	40

The completion times noted in the table above provide reasonable assurance that the OMAs can reliably be performed under a wide range of conceivable conditions by different plant crews because it, in conjunction with the time margins associated with each action and other installed fire protection features, account for sources of uncertainty such as variations in fire and plant conditions, factors unable to be recreated in demonstrations and human-centered factors.

3.14.12 Reliability

A reliable action is a feasible action that is analyzed and demonstrated as being dependably repeatable within an available time. The above criteria, 3.14.1 through 3.14.10 provide the staff's basis that the actions are feasible. Section 3.14.11, provides a discussion of the available time margin. The licensee provided a basis that the actions were reliable, based on the available time margin; the administrative controls such as procedures, staffing levels, and availability of equipment; and by accounting for uncertainty in fires and plant conditions. Therefore, the OMAs included in this review are reliable because there is adequate time available to account for uncertainties not only in estimates of the time available, but also in estimates of how long it takes to diagnose a fire and execute the OMAs (e.g., as based, at least in part, on a plant demonstration of the actions under non-fire conditions). OMA 1 for fire area R–4 is performed in a fire affected area and is performed after the fire is extinguished and after the SERO is fully staffed. This OMA establishes the RWST as the suction supply for the charging system and is not conducted until after AFW is established and since the BASTs have a minimum TRM specified inventory to ensure 72 minutes of flow, OMA 1 can be completed with 40 minutes of margin.

3.15 Summary of Defense-in-Depth and Operator Manual Actions

In summary, the defense-in-depth concept for a fire in the fire areas discussed above provides a level of safety that results in the unlikely occurrence of fires, rapid detection, control and extinguishment of fires that do occur and the protection of structures, systems and components important to safety. As discussed above, the licensee has provided preventative and protective measures in addition to feasible and reliable OMAs that together demonstrate the licensee's ability to preserve or maintain safe shutdown capability in the event of a fire in the analyzed fire areas.

3.16 Authorized by Law

This exemption would allow MPS2 to rely on OMAs, in conjunction with the other installed fire protection features, to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event, as part of its fire protection program, in lieu of meeting the requirements specified in III.G.2 for a fire in the analyzed fire areas. 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 this 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.

3.17 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. Based on the above, no new accident precursors are created by the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas. Therefore, the probability of postulated accidents is not increased. Also based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

3.18 Consistent with Common Defense and Security

This exemption would allow MPS2 to credit the use of the specific OMAs, in conjunction with the other installed fire protection features, in response to a fire in the analyzed fire areas, discussed above, in lieu of meeting the requirements specified in III.G.2. This change, to the operation of the plant, has no relation to security issues. Therefore, the common defense and security is not diminished by this exemption.

3.19 Special Circumstances

One of the special circumstances described in 10 CFR 50.12(a)(2)(ii) is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G is to ensure that at least one means of achieving and maintaining hot shutdown remains available during and following a postulated fire event. While the licensee does not comply with the explicit requirements of III.G.2 specifically, they do meet the underlying purpose of 10 CFR Part 50, Appendix R, and Section III.G as a whole. Therefore, special circumstances exist that warrant the issuance of this exemption as required by 10 CFR 50.12(a)(2)(ii).

4.0 Conclusion

Based on the all of the features of the defense-in-depth concept discussed above, the NRC staff concludes that the use of the requested OMAs, in these particular instances and in conjunction with the other installed fire protection features, in lieu of strict compliance with the requirements of III.G.2 is consistent with the underlying purpose of the rule. As such, the level of safety present at MPS2 is commensurate with the established safety standards for nuclear power plants.

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, is consistent with the common defense and security and that special circumstances are present to warrant issuance of the exemption. Therefore, the Commission hereby grants Dominion an exemption from the requirements of Section III.G.2 of Appendix R of 10 CFR Part 50, to utilize the OMAs discussed above at MPS2.

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 (77 FR 39746).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of July 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–17735 Filed 7–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0138]

Final Standard Review Plan, Branch Technical Position 7–19 on Guidance for Evaluation of Diversity and Defense-in-Depth in Digital Computer-Based Instrumentation and Control Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) staff is issuing Final Revision 6 to NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," Branch Technical Position (BTP) 7–19 on "Guidance for Evaluation of Diversity and Defense-in-Depth in Digital Computer-Based Instrumentation and Control Systems." This BTP is to be cited as the acceptance criteria for Diversity and Defense-in-Depth in Digital Computer-Based Instrumentation and Control Systems in the Standard Review Plan (SRP), Chapter 7, for those standard reactor designs that have not been certified prior to the date of this BTP. The purpose of this SRP update is to provide staff guidance for assessing combined license (COL) applicant compliance with the requirements.

DATES: The effective date of this SRP update is August 23, 2012.

ADDRESSES: Please refer to Docket ID NRC–2010–0138 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0138. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Final Revision 6 to NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," Branch Technical Position (BTP) 7–19 on "Guidance for Evaluation of Diversity and Defense-in-Depth in Digital Computer-Based Instrumentation and Control Systems" (*Package*) (ADAMS Accession No. ML110550767), Final Revision 6 to NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," Branch Technical Position (BTP) 7–19 on "Guidance for Evaluation of Diversity and Defense-in-Depth in Digital Computer-Based Instrumentation and Control Systems," (ADAMS Accession No. ML110550791), and Comment Response Document for BTP 7–19, (ADAMS Accession No. ML120830075).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

FOR FURTHER INFORMATION CONTACT: Mr. Ian C. Jung, Chief, Instrumentation, Controls and Electrical Engineering Branch 2, Division of Engineering, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2969 or email at *Ian.Jung@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC staff issues SRPs and BTPs to facilitate timely implementation of current staff guidance and to facilitate activities associated with the review of applications for design certifications and combined licenses by the Office of New Reactors. Additionally, the SRPs and BTPs are used by the Office of Nuclear Reactor Regulation staff in the review of applications for license amendments in currently operating nuclear power plants. The NRC staff will also incorporate the revised SRP section and BTP 7–19 into the next revision of Regulatory Guide 1.206 and any related guidance documents.

On March 19, 2010, the NRC staff issued the proposed Revision 6 of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," BTP 7–19 on "Guidance for Evaluation of Diversity and Defense-in-Depth in Digital Computer-Based Instrumentation and Control Systems" (ADAMS Accession No. ML093490771). The NRC staff considered comments received on the proposed revision to BTP 7–19 as well as recommendations from the ACRS, and incorporated the changes suggested in the comments in this final issuance. The NRC staff responses to these comments can be found under ADAMS Accession No. ML120830075.

Backfitting: This SRP update does not constitute backfitting as defined in Title 10 of the Code of Federal Regulations (10 CFR) 50.109, nor is it inconsistent with any of the issue finality provisions in 10 CFR Part 52. This SRP does not contain any new requirements for COL applicants or holders under Part 52, or for licensees of existing operating units licensed under part 50. Rather, it contains additional guidance and clarification on compliance with 10 CFR 52.79(a)(31), which may be used by COL applicants in the preparation of their applications.

Congressional Review Act: This SRP update is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, OMB has not found it to be a major rule as designated in the Congressional Review Act.

Dated at Rockville, Maryland, this 16th day of July 2012.

For the Nuclear Regulatory Commission.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2012–18018 Filed 7–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 23, 30, August 6, 13, 20, 27, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 23, 2012

There are no meetings scheduled for the week of July 23, 2012.

Week of July 30, 2012—Tentative

There are no meetings scheduled for the week of July 30, 2012.

Week of August 6, 2012—Tentative

Tuesday, August 7, 2012

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: John Monninger, 301–415–0610).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of August 13, 2012—Tentative

There are no meetings scheduled for the week of August 13, 2012.

Week of August 20, 2012—Tentative

There are no meetings scheduled for the week of August 20, 2012.

Week of August 27, 2012—Tentative

There are no meetings scheduled for the week of August 27, 2012.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: July 19, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–18129 Filed 7–20–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

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, July 26, 2012 at 2:00 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), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, 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, July 26, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; 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: July 19, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–18076 Filed 7–20–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67459; File No. SR–OCC–2012–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Amendments to Certain Rules Applicable to Stock Futures

July 18, 2012.

I. Introduction

On May 24, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2012–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on June 7, 2012.[3] The Commission received no comment letters on the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change would clarify the applicability of OCC's By-Laws and Rules to security futures on index-linked securities such as exchange-traded notes, which are currently traded on OneChicago, LLC. Index-linked securities are non-convertible debt of a major financial institution that typically have a term of at least one year but not greater than thirty years and that provide for payment at maturity based upon the performance of an index or indexes of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing. Index-linked securities are traded on national securities exchanges and, although they are technically debt securities, meet the definition of "NMS stock" under Regulation NMS.[4] Furthermore, index-linked securities traded on designated contract markets meet the requirements of Commodity Futures Trading Commission Regulation 41.21 for the underlying securities of security futures products that are eligible to be treated as a single security. OneChicago therefore treats security futures on index-linked securities as security futures on single securities, or "single stock futures," for listing and trading purposes, and trading in them will generally be governed by the same rules that are applicable to other single stock futures. OCC similarly treats futures on index-linked securities as single stock futures, and accordingly is proposing to amend the definition of "stock future" in Article I of its By-Laws to explicitly include index-linked securities.[5]

In addition to amending the definition of "stock future" to reference index-linked securities, OCC is amending Interpretation and Policy .05 to Article XII, Section 3 of its By-Laws to clarify that a call of an entire class of index-linked securities will result in an adjustment of security futures on index-linked securities similar to the adjustment that would be made to other stock futures in the event of a cash merger, but that a partial call will not result in an adjustment. OCC is also adding Interpretation and Policy .11 to Article XII, Section 3 of its By-Laws to establish that interest payments on index-linked securities will generally be considered "ordinary cash dividends or distributions" within the meaning of paragraph (c) of Section 3. The amendments parallel amendments previously made to Article VI, Section 11A of the By-Laws to accommodate options on index-linked securities.[6]

The proposed rule change also would amend Interpretation and Policy .08 to Article XII, Section 3, which provides that OCC will ordinarily adjust for capital gains distributions on underlying "fund shares," *i.e.*, shares of exchange-traded funds ("ETFs") but with a *de minimis* exception under which no adjustment will be made in respect of distributions of less than $.125 per fund share. (An equivalent *de minimis* provision is contained in the Interpretations and Policies to Article VI, Section 11A, governing stock options.) However, in the case of stock futures, OneChicago, the only futures exchange clearing through OCC that currently trades such futures, has requested that adjustments be made for capital gains distributions in respect of fund shares without exception in order to permit the stock futures on ETFs to more closely reflect the economic characteristics of the ETFs' underlying stocks. This revision to the provision for fund shares futures will establish consistency with Interpretation and Policy .01(b) to Article XII, Section 3 which also does not contain a *de minimis* threshold for stock futures adjusted for cash distributions. Accordingly, OCC is amending Interpretation and Policy .08 to eliminate the *de minimis* exception.

Additionally, OCC is making a technical correction to Rule 1304, which permits the acceleration of the maturity date for stock futures adjusted to require the delivery of cash, and Rule 807, which permits the acceleration of the expiration date of stock options adjusted to require the delivery of cash. Rules 1304 and 807 contain language that could be read to suggest that such acceleration would occur only in the event of a cash-out merger. However, cash-outs also may occur as a result of bankruptcies, ADS liquidations, and other events, and there is no reason to limit such accelerations to cash-out merger events. Accordingly, OCC is amending Rules 1304 and 807 to delete language that may be perceived to limit OCC's ability to accelerate a maturity or expiration date to such events. OCC is also deleting as obsolete a version of Rule 807 that was effective before January 1, 2008, and related language regarding the effective date in what would now be the only version of Rule 807.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–67095 (Jun. 1, 2012), 77 FR 33794 (Jun. 7, 2012).

[4] "NMS stock" is defined in Rule 600(b)(47) of Regulation NMS to mean "any NMS security other than an option." "NMS security" is defined in Rule 600(b)(46) to mean any security for which transaction reports are collected and disseminated under an effective national market system plan, and because index-linked securities are exchange traded they fall within this definition.

[5] Article I of OCC's By-Laws defines "index-linked security" to mean "a debt security listed on a national securities exchange, the payment upon maturity of which is based in whole or in part upon the performance of an index or indexes of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing."

[6] Securities Exchange Act Release No. 34–60872 (October 23, 2009), 74 FR 55878 (October 29, 2009).

rules and regulations thereunder applicable to such organization.[7] Section 17A(b)(3)(F) of the Act requires that a clearing agency, among other things, have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[8]

The Commission believes that the change is consistent with the purposes and requirements of Section 17A of the Act[9] and the rules and regulations thereunder applicable to OCC. In particular, the Commission believes that clarifying the applicability of OCC's By-Laws and Rules to security futures on index-linked securities should facilitate the clearance and settlement of such products and, thus, should help promote the prompt and accurate clearance and settlement of securities transactions for which OCC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–OCC–2012–08) be, and hereby is, approved.[12]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17978 Filed 7–23–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(2)(B).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67461; File No. SR–NYSEArca–2012–69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

July 18, 2012.

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 July 12, 2012, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Fee Schedule"). The Exchange proposes to implement the fee changes on July 12, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on July 12, 2012.

ETP Holders, including Market Makers, are currently eligible to qualify for the Tape C Step Up Tier and the corresponding reduced execution fee of $0.0029 per share for orders that take liquidity from the Exchange in Tape C securities.

The Exchange proposes to introduce a Tape C Step Up Tier 2 for ETP Holders, including Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape C Securities ("Tape C Adding ADV") during the billing month that is at least 2 million shares greater than the ETP Holder's or Market Maker's Tape C Adding ADV during the second calendar quarter of 2012 ("Q2 2012"), subject to the ETP Holder's or Market Maker's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month as a percentage of CADV being no less than during Q2 2012.[4]

ETP Holders and Market Makers that satisfy the requirements for the Tape C Step Up Tier 2 will receive a $0.0002 per share credit for orders that provide liquidity to the Exchange in Tape C Securities, which shall be in addition to the ETP Holder's or Market Maker's Tiered or Basic Rate credit(s).[5] As

[4] For purposes of determining whether a firm that becomes an ETP Holder after Q2 2012 qualifies for the Tape C Step Up Tier 2, the new ETP Holder's Tape C Adding ADV during Q2 2012 would be zero. Similarly, the ETP Holder's combined providing ADV in Tape A, Tape B, and Tape C securities during Q2 2012 would be zero. Additionally, the ADV of a firm that becomes an ETP Holder during Q2 2012 would be calculated based on the number of trading days during Q2 2012, not the number of trading days during which the firm was an ETP Holder.

[5] The Exchange notes that, for purposes of determining whether an ETP Holder or Market Maker qualifies for the Tape C Step Up Tier 2 for the month of July 2012, the ETP Holder's or Market Maker's Tape C Adding ADV during the billing month would be measured beginning on July 12, 2012, the effective and operative date of this proposed change, through the end of the month and would not take into account the activity or trading days prior to that date. Similarly, the ETP Holder's or Market Maker's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month as a percentage of CADV would be calculated using the period beginning on July 12, 2012 through the end of the month and would not take into account the activity or trading days prior to that date. For an ETP Holder or Market Maker that qualifies for the $0.0002 per share credit for July 2012, the credit would not apply to the ETP Holder's or Market Maker's orders that provide

proposed, Investor Tier 1 and Investor Tier 2 ETP Holders and Market Makers could not qualify for the Tape C Step Up Tier 2. However, Investor Tier 3 ETP Holders and Market Makers could qualify for the Tape C Step Up Tier 2 credit. For all other fees and credits, Tiered or Basic Rates would apply based on a firm's qualifying levels. The Exchange proposes prohibiting Investor Tier 1 and Investor Tier 2 ETP Holders from qualifying for the Tape C Step Up Tier 2 because the ETP Holders that qualify for Investor Tier 1 and Investor Tier 2 would already receive a higher credit for such executions. In contrast, the Exchange proposes permitting Investor Tier 3 ETP Holders to qualify for the Tape C Step Up Tier 2 credit because, even when combined with the $0.0002 Tape C Step Up Tier 2 credit, the ETP Holders that qualify for Investor Tier 3 would not achieve an overall credit rate that is higher than that which is available under Investor Tiers 1 or 2.

For example, assume that a particular ETP Holder's Tape C Adding ADV during the billing month is 4 million shares and that its Tape C Adding ADV during Q2 2012 was 1.5 million shares. Additionally, assume that the ETP Holder's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month was 0.25% of CADV and that its combined providing ADV in Tape A, Tape B, and Tape C securities during Q2 2012 was 0.23% of CADV. In this example, the ETP Holder would qualify for the Tape C Step Up Tier 2 and would receive a credit of $0.0002 per share for its orders that provide liquidity to the Exchange in Tape C securities, which would be in addition to the ETP Holder's Tiered or Basic Rate credit(s).[6] However, if the ETP Holder's Tape C Adding ADV during the billing month were 3 million shares, *i.e.*, less than 2 million shares greater than the Q2 2012 amount, then the ETP Holder would not qualify for the Tape C Step Up Tier 2. Similarly, if the ETP Holder's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month were 0.20% of CADV, *i.e.*, less than the Q2 2012 percentage, then the ETP Holder would not qualify for the Tape C Step Up Tier 2.

liquidity to the Exchange in Tape C Securities prior to July 12, 2012.

[6] For example, if the ETP Holder submits a Mid-Point Passive Liquidity Order that provides liquidity on the Exchange and the ETP Holder is billed according to Basic Rates, the ETP Holder would receive a total credit of $0.0017 per share (*i.e.*, $0.0015 per share pursuant to the Basic Rates plus $0.0002 per share pursuant to the Tape C Step Up Tier 2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(4) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage ETP Holders to send additional orders in Tape C securities to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes that this may incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange believes that the rate proposed for the Tape C Step Up Tier 2 credit is reasonable because it is directly related to an ETP Holder's level of executions in Tape C securities during the month. The Exchange also believes that the proposed rate is reasonable because, when combined with other Tier or Basic Rate credits that are available to ETP Holders, it is consistent with certain other credits, such as the Investor Tier 2 credit of $0.0032, which are available to ETP Holders that satisfy certain criteria related to the ETP Holder's level of trading activity on the Exchange. Additionally, the Exchange believes that the proposed Tape C Step Up Tier 2 credit is equitable and not unfairly discriminatory because it would incentivize ETP Holders to submit orders in Tape C securities to the Exchange and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes. Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels, the Exchange believes that the proposed Tape C Step Up Tier 2 credit is equitable and not unfairly discriminatory because it would be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis.

Additionally, the Exchange believes that prohibiting Investor Tier 1 and Investor Tier 2 ETP Holders from qualifying for the Tape C Step Up Tier 2 is reasonable, equitable and not unfairly discriminatory because the ETP Holders that qualify for Investor Tier 1 and Investor Tier 2 would already receive a higher credit for such executions. In contrast, the Exchange believes that permitting Investor Tier 3 ETP Holders to qualify for the Tape C Step Up Tier 2 credit is reasonable, equitable and not unfairly discriminatory because, even when combined with the $0.0002 Tape C Step Up Tier 2 credit, the ETP Holders that qualify for Investor Tier 3 would not achieve an overall credit rate that is higher than that which is available under Investor Tiers 1 or 2.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2012–69 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–2012–69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. 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 *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–2012–69 and should be submitted on or before August 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–17979 Filed 7–23–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: 60-Day notice and request for comments. 8(a) Business Development Program.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 24, 2012.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528 *sandra.johnston@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Information necessary for Small Business Administration (SBA) to determine whether loan applicant meets SBA's credit and regulatory criteria. Respondents are small business concerns and Development Companies which are certified by SBA to package 504 loans.

Title: "U.S. Small Business Administration Application for Section 504 Loan".

Description of Respondents: Applicants applying for a SBA Loan.

Form Number: 1244.

Annual Responses: 6,800.

Annual Burden: 15,735.

SUPPLEMENTARY INFORMATION: The servicing agent agreement is executed by the borrower, certified development company and the loan servicing agent. The agreement is primarily used to certify use of loan proceeds, appoint a servicing agent and acknowledge the imposition of various fees.

Title: "Servicing Agent Agreement".

Description of Respondents: Applicants applying for a SBA Loan.

Form Number: 1506.

Annual Responses: 7,830.

Annual Burden: 7,830.

SUPPLEMENTARY INFORMATION: Small Business Administration SBA's Premier Certified Lenders Program (PCLP) transfers considerable authority and autonomy to Premier Certified Development Companies (Premier CDCs). The PCLP forms (Forms 2233 and 2234) collect loan information to assist the agency in carrying-out its lender, portfolio and program oversight responsibilities. Form 2233 will collect loan loss reserve information to ensure Premier CDC compliance with statutory requirements. SBA will use Form 2234 to approve loan eligibility and track portfolio performance.

Title: "PCLP Quarterly Loan Reserve Report and PCLP Guarantee Request".

Description of Respondents: CDC's applicants applying for a SBA Loan.

Form Numbers: 2333, 2334, Parts A, B, C.

Annual Responses: 1,700.

Annual Burden: 1,558.

SUPPLEMENTARY INFORMATION: Information collection is needed to ensure that Microloan Program activity meets the statutory goals of assisting mandated target market. The information is used by the reporting participants and the SBA to assist with portfolio management, risk management, loan servicing, oversight and compliance, data management and understanding of short and loan term trends and development of outcome measures.

Title: "Microloan Program Electronic Reporting System (MPERS) (MPERSystem)".

Description of Respondents: Participants for the Microloan program.

Form Number: N/A.

Annual Responses: 2,500.

Annual Burden: 625.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Fendler, Director, License & Program, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, License & Program, 202–205–7559 *carol.fendler@sba.gov;* Curtis

[9] 17 CFR 200.30–3(a)(12).

B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Form 860 is used by Small Business Administration (SBA) examiners to obtain information about assets of small business investment companies (SBICs) that are held in account at financial institutions and about SBIC borrowings from financial institutions. This information, which is collected directly from the financial institutions, provides independent confirmation of asset and liability figures reported to SBA by SBICs as well as supplemental information used to evaluate regulatory compliance and financial condition.

Title: "Financial Institution Confirmation Form".

Description of Respondents: Small Business Investment Companies.

Form Number: 860.

Annual Responses: 1,500.

Annual Burden: 750.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Gina Beyer, Supervisor Administrative Officer, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gina Byer, Supervisor Administrative Officer, 202–205–6450 *gina.beyer@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA is required to survey affected disaster areas within a state upon request by Governor of that state to determine if there is sufficient damage to warrant a disaster declaration. Information is obtained from individuals, businesses, and public officials.

Title: "Disaster Survey Worksheet".

Description of Respondents: Affected Disaster Areas.

Form Number: 987.

Annual Responses: 3,160.

Annual Burden: 262.

SUPPLEMENTARY INFORMATION: A team of Quality Assurance staff at the Disaster Assistance Center (DASC) will conduct a brief telephone survey of customers to determine their satisfaction with the services received from the (DASC) and the Field Operations Centers. The result will help the Agency to improve where necessary, the delivery of critical financial assistance to disaster victims.

Title: "Disaster Assistance Customer Satisfaction Survey".

Description of Respondents: Affected Disaster Areas.

Form Number: 2313 CSC, FOC.

Annual Responses: 24,284.

Annual Burden: 2,014.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Barbara Brannan, Program Analyst, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Program Analyst, 202–205–6545 *barbara.brannan@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Administration's (SBA) Surety Bond (SBG) Program was created to encourage surety companies to issue bonds for small contractors. The information collected on these forms is used to evaluate the eligibility of applicants for the program. Changes are being made to SBA Form 990, Surety Bond Guarantee Agreement, SBA Form 991, Surety Bond Guarantee Agreement Addendum, SBA Form 994, Application for Surety Bond Guarantee Assistance, SBA Form 994B, Surety Guarantee Underwriting Review, SBA Form 994F, Schedule of Work in Process, and SBA Form 994H, Default Report, Claim for Reimbursement & Records of Administrative Action. New SBA Form 994 R, Application for Surety Bond Guarantee Assistance—Rider, is being added. SBA is issuing Interim Final Rule, American Recovery and Reinvestment Act: Surety Bond Guarantees; Size Standards (RIN–3245–AF94) that will implement the SBG program changes resulting from the Recovery Act.

Title: "Surety Bond Guarantee Assistance".

Description of Respondents: Surety Bond Companies.

Form Number's: 990, 991, 994, 994B, 994F, 994H, 994R.

Annual Responses: 17,965.

Annual Burden: 2,080.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Travis Farris, Assistant Counsel to the Inspector General, Office of Inspector General, Small Business Administration, 409 3rd Street SW., Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Travis Farris, Assistant Counsel to the Inspector General, 202–205–7178 *travis.farris@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration SBA Form 912 is used to collect information needed to make character determinations with respect to applicants for monetary loan assistance or applicants for participation in SBA programs. The information collected is used as the basis for conducting name checks at national Federal Bureau of Investigations (FBI) and local levels.

Title: "Statement of Personal History".

Description of Respondents: Character determination for SBA Applicants.

Form Number: 912.

Annual Responses: 142,000.

Annual Burden: 35,000.

Curtis Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 2012–18080 Filed 7–23–12; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13110 and # 13111]

Georgia Disaster # GA–00040

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated 07/17/2012.

Incident: Severe Storms and Flooding.

Incident Period: 06/25/2012 through 07/10/2012.

Effective Date: 07/17/2012.

Physical Loan Application Deadline Date: 09/17/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/17/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration,

applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Charlton.

Contiguous Counties:
Georgia: Brantley, Camden, Ware.
Florida: Baker, Nassau.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.875
Homeowners Without Credit Available Elsewhere	1.938
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13110 6 and for economic injury is 13111 0.

The States which received an EIDL Declaration # are Georgia, Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 17, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–17993 Filed 7–23–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13103 and # 13104]

Florida Disaster Number FL–00071

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4068–DR), dated 07/03/2012.

Incident: Tropical Storm Debby.

Incident Period: 06/23/2012 and continuing.

Effective Date: 07/17/2012.

Physical Loan Application Deadline Date: 09/04/2012.

EIDL Loan Application Deadline Date: 04/03/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 07/03/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Citrus, Gilchrist, Lafayette, Polk, Sarasota.

Contiguous Counties: (Economic Injury Loans Only):
Florida: Lake, Levy, Marion, Orange.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–18002 Filed 7–23–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13107 and # 13108]

Florida Disaster Number FL–00072

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4068–DR), dated 07/09/2012.

Incident: Tropical Storm Debby.

Incident Period: 06/23/2012 and continuing.

Effective Date: 07/17/2012.

Physical Loan Application Deadline Date: 09/07/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 07/09/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Pinellas.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–18004 Filed 7–23–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7960]

30-Day Notice of Proposed Information Collection: DS 7655, Iraqi Citizens and Nationals Employed by Federal Contractors and Grantees

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Iraqi Citizens and Nationals Employed by Federal Contractors, Grantees and Cooperative Agreement Partners.
- *OMB Control Number:* 1405–0184.
- *Type of Request:* Extension of an Approved Collection.
- *Originating Office:* PRM/A.
- *Form Number:* DS 7655.
- *Respondents:* Federal Contractors, grantees, and cooperative agreement partners of the Department of State.
- *Estimated Number of Respondents:* 50.
- *Estimated Number of Responses:* 200.
- *Average Hours per Response:* .5.
- *Total Estimated Burden:* 100 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 24, 2012.

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

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov*. You can search for the document by: Selecting "Notice" under Document Type, entering the

Public Notice number as the "Keyword or ID", checking the "Open for Comment" box, and then click "Search". If necessary, use the "Narrow by Agency" option on the Results page.

- *Email: HawleyCV@state.gov.*
- *Mail (paper, or CD submissions):* DOS/PRM, Office of Admissions, 2025 E Street NW., Washington, DC 20522–0908.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Charles Hawley, who may be reached on 202–453–9249 or at *HawleyCV@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: The National Defense Authorization Act (NDAA) of 2008 became Public Law 110–181 on 28 January 2008. Section 1248(c)—"Report on Iraqi Citizens and Nationals Employed by the United States Government or Federal Contractors in Iraq"—of this Act requires the Secretary of State to request from each prime contractor or grantee that has performed work in Iraq for the Department of State since March 20, 2003, under a contract, grant, or cooperative agreement with their respective agencies that is valued in excess of $25,000, information that can be used to verify the employment of Iraqi nationals by such contractor or grantee. To the extent possible, biographical information, to include employee name, date(s) of employment, biometric, and other data must be collected and used to verify employment for the processing and adjudication of refugee, asylum, special immigrant visa, and other immigration claims and applications.

Methodology:

The Department of State will collect the information via electronic submission.

Additional Information:

This information collection will be used to fulfill the requirements under Section 1248 of the National Defense Authorization Act of 2008 (Pub. L. 108–181)

Dated: July 12, 2012.

Amy B. Nelson,

Acting Director, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2012–18040 Filed 7–23–12; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 7961]

Imposition of Nonproliferation Measures on Five Syrian Entities

AGENCY: Bureau of International Security and Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The U.S. Government has determined that five entities have engaged in proliferation activities that warrant the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998 and Executive Order 13382 of June 28, 2005.

DATES: *Effective Date:* July 24, 2012.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State (202–647–4930). On import ban issues, Rochelle Stern, Director Policy Planning and Program Management, Office of Foreign Assets Control, Department of the Treasury (202–622–2500). On U.S. Government procurement ban issues: Kim Triplett, Office of the Procurement Executive, Department of State (703–875–4079).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and Section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on July 17, 2012 that the following five Syrian entities have engaged in proliferation activities that warrant the imposition of measures pursuant to sections 4(b), 4(c), and 4(d) of Executive Order 12938:

Business Lab

Handasieh, also known as:

General Organization for Engineering Industries

Industrial Solutions

Mechanical Construction Factory (MCF)

Syrian Arab Company for Electronic Industries, also known as:

Syronics

Accordingly, pursuant to the provisions of Executive Order 12938, the following measures are imposed on these entities, their subunits, and successors for two years:

1. No departments or agencies of the United States Government shall procure or enter into any contract for the procurement of any goods, technology, or services from these entities including the termination of existing contracts;

2. No departments or agencies of the United States government shall provide any assistance to these entities, and shall not obligate further funds for such purposes;

3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

In addition, pursuant to section 126.7(a)(1) of the International Traffic in Arms Regulations, it is deemed that suspending the above-named entities from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, for two years, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States to the above-named entities; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations to the above-named entities; and (c) temporary import of defense articles to or from the above-named entities.

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for the above-named entities.

Dated: July 18, 2012.

Thomas M. Countryman,

Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2012–18041 Filed 7–23–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 7962]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR Parts 120 to 130) on persons convicted of violating, or conspiracy to violate, Section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. 2778). Further, a public notice was published in the **Federal Register** on Tuesday, November 15, 2011, listing persons statutorily debarred pursuant to the ITAR; this notice makes one correction to that notice.

DATES: *Effective Date:* The effective date is the date of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632–2798.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for "statutory debarment" of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. Export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of this notice (Name; Date of Conviction; District; Case No.; Month/Year of Birth):

(1) Miguel Avendano-Reyna; April 30, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00999–S1–001; April, 1976.

(2) Davoud Baniameri (aka Davoud Baniamery, David Baniameri, David Baniamery); August 12, 2011; U.S. District Court, Northern District of Illinois; Case No. 09–CR–736–1; August, 1972.

(3) Donald V. Bernardo; November 16, 2011; U.S. District Court, Southern District of Florida; Case No. 1:10–60331–CR–SEITZ–1; November, 1938.

(4) Jorge Blanco-Castillo; September 20, 2011; U.S. District Court, Southern District of Texas; Case No. 1:11CR00178–001; November, 1969.

(5) Igor Bobel; May 11, 2012; U.S. District Court, Eastern District of Pennsylvania; Case No. 11–CR–00749–HB–1; February, 1968.

(6) Oscar Edwardo Cantu; March 21, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00686–S1–001; March, 1980.

(7) Henson Chua; November 8, 2011; U.S. District Court, Middle District of Florida; Case No. 8:11–CR–137–T–30AEP; January, 1964.

(8) Kue Sang Chun; November 15, 2011; U.S. District Court, Northern District of Ohio; Case No. 1:11CR00009–001; October, 1943.

(9) Luz Sylvia Cortez; November 28, 2011; U.S. District Court, Southern District of Texas; Case No. 7:10CR00061–002; April, 1976.

(10) Dan Tran Dang; April 16, 2012; U.S. District Court, Central District of California; Case No. SACR 08–00322–CJC; December, 1954.

(11) Santos Isidro de la Paz; May 11, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00396–007; September, 1988.

(12) Anna Fermanova; October 26, 2011; U.S. District Court, Eastern District of New York; Case No. CR11–00008(CBA); July, 1986.

(13) Galaxy Aviation Services; June 30, 2011; U.S. District Court, Middle District of Georgia; Case No. 5:10–CR–00058–004–MTT; N/A.

(14) Ruslan Gilchenko; February 4, 2011; U.S. District Court, District of Arizona; Case No. CR10–00233–001–PHX–FJM; October, 1976.

(15) Juan Victorian Gimenez; March 21, 2012; U.S. District Court, Southern District of Florida; Case No. 1:11–20669–CR–MARTINEZ–1; October, 1983.

(16) Enrique Gustavo Gonzalez; April 28, 2012; U.S. District Court, Southern District of Texas; Case No. 7:10CR01032–001; September, 1990.

(17) Issac Obed Gonzalez; July 11, 2011; U.S. District Court, Southern

District of Texas; Case No. 7:10CR01171–001; October, 1989.

(18) Steven Neal Greenoe; January 10, 2012; U.S. District Court, Eastern District of North Carolina; Case No. 5:10–CR–277–1H; November, 1973.

(19) Stephen Glen Guerra; February 6, 2012; U.S. District Court, Western District of Texas; Case No. W–11–CR–200(04); February, 1979.

(20) Oscar Hernandez-Bravo (aka Oscar Bravo Hernandez); April 4, 2012; U.S. District Court, Southern District of Texas; Case No. 7:09CR00809–S1–001; February, 1971.

(21) Chou-Fu Ho; September 20, 2011; U.S. District Court, Southern District of California; Case No. 10CR2415 BTM; September, 1971.

(22) Rene Huerta, Jr.; August 16, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR01396–001; October, 1972.

(23) Liem Duc Huynh (aka Duc Huynh); April 17, 2012; U.S. District Court, Central District of California; Case No. SACR 08–00322–CJC; September, 1959.

(24) Octavio Ibarra-Sanchez; February 22, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR01518–001; March, 1984.

(25) Phillip Andro Jamison; November 8, 2011; U.S. District Court, Southern District of California; Case No. 10CR3618–H; February, 1980.

(26) Young Su Kim; August 19, 2011; U.S. District Court, District of Colorado; Case No. 11–cr–00171–LTB–01; August, 1953.

(27) Marc Knapp; September 13, 2011; U.S. District Court, District of Delaware; Case No. 10CR108–LPS; December, 1974.

(28) Connor H. Kraegel; August 24, 2011; U.S. District Court, District of Maryland; Case No. AW–8–11–CR–0273–001; October, 1990.

(29) Li Li (aka Lea Li); October 3, 2011; U.S. District Court, Eastern District of Virginia; Case No. 1:10CR00207–002; April, 1978.

(30) Mario Julian Martinez-Bernache; March 15, 2012; U.S. District Court, Southern District of Texas; Case No. 1:11CR00759–001; August, 1989.

(31) Scott Michael Miller; December 1, 2011; U.S. District Court, Southern District of New York; Case No. 06 Crim. 0566 (DC); August, 1958.

(32) Placido Molina, Jr.; March 2, 2012; U.S. District Court, Southern District of Texas; Case No. 1:11CR00530–001; September, 1984.

(33) Balraj Naidu; December 20, 2010; U.S. District Court, District of Maryland; Case No. CCB–1–08–CR–00091–002; February, 1967.

(34) Jamal Nehme; May 26, 2011; U.S. District Court, District of Delaware; Case No. 09–CR–74–01 GMS; April, 1963.

(35) Joseph Oldani; June 3, 2009; U.S. District Court, Southern District of West Virginia; Case No. 3:08–00287; August, 1987.

(36) Timothy Oldani; June 3, 2009; U.S. District Court, Southern District of West Virginia; Case No. 3:09–00010; November, 1984.

(37) John Dennis Tan Ong (aka Dennis Ong, John Tan Ong); December 19, 2011; U.S. District Court, Northern District of Georgia; Case No. 1:10–cr–352–JEC–01; November, 1973.

(38) Juan Narcizo Oyervides-Campos; November 21, 2011; U.S. District Court, Southern District of Texas; Case No. 7:11CR00338–001; July, 1990.

(39) Manuel Mario Pavon; January 13, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR01434–S–001; June, 1991.

(40) Jerome Stuart Pendzich; October 12, 2011; U.S. District Court, Eastern District of Tennessee; Case No. 3:10–CR–168–001; March, 1977.

(41) Lee Roy Perez; December 13, 2011; U.S. District Court, Southern District of Texas; Case No. 7:11CR00389–001; July, 1987.

(42) Julio Alejandro Quirino; August 31, 2011; U.S. District Court, Southern District of Texas; Case No. 7:10CR01171–002; November, 1984.

(43) Ramadan Rama; July 21, 2011; U.S. District Court, Eastern District of North Carolina; Case No. 5:10–CR–397–1D; December, 1970.

(44) Martin Ramirez-Rodriguez (aka Julian Garcia-Penaloza, Alberto Moreno-Garza, Machin Aguilar-Gaona); November 9, 2010; U.S. District Court, Northern District of Florida; Case No. 5:10CR39–002–RS; October, 1983.

(45) Jose Arturo Ramon-Herrada; February 24, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00853–002; February, 1983.

(46) Felix Reyes; July 28, 2011; U.S. District Court, Southern District of Texas; Case No. 7:10CR01500–001; March, 1992.

(47) Jose Guadalupe Reyes-Martinez; November 21, 2011; U.S. District Court, Southern District of Texas; Case No. 7:11CR00396–010; September, 1982.

(48) Adrian Jesus Reyna; January 27, 2012; U.S. District Court, Western District of Texas; Case No. W–11–CR–200(01); July, 1986.

(49) Gerardo Domingo Rodriguez-Rivera; January 13, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR01434–S–002; June, 1993.

(50) Nestor Omar Sauceda-Trevino; July 18, 2011; U.S. District Court, Southern District of Texas; Case No. 1:11CR00240–001; May, 1990.

(51) Hamid Seifi, (aka Hank Seifi); July 5, 2011; U.S. District Court, Middle District of Georgia; Case No. 5:10–CR–00058–003–MTT; March, 1963.

(52) Chan Hok Shek, (aka John Chan); September 27, 2011; U.S. District Court, District of Massachusetts; Case No. 1:08–CR–10317–001–DPW; December, 1953.

(53) Andrew Silcox; March 1, 2012; U.S. District Court, Western District of Texas; Case No. SA–11–CR–883(1)FB; March, 1958.

(54) Oscar Sorroza-Garcia; July 5, 2011; U.S. District Court, Southern District of California; Case No. 09CR3600–BEN; October, 1973.

(55) Staff Gasket Manufacturing Corp.; September 15, 2011; U.S. District Court, District of New Jersey; Case No. 2:CR11–0256–01; N/A.

(56) Swiss Technology, Inc.; November 15, 2011; U.S. District Court, District of New Jersey; Case No. 2:11–CR–473–JLL–01; N/A.

(57) Leonardo Talamantez; April 23, 2012; U.S. District Court, Western District of Texas; Case No. DR–11–CR–1354(2)–AM; July, 1986.

(58) The Parts Guys, LLC; November 3, 2011; U.S. District Court, Middle District of Georgia; Case No. 5:10–CR–00058–002–MTT; N/A.

(59) Michael Edward Todd; November 8, 2011; U.S. District Court, Middle District of Georgia; Case No. 5:10–CR–00058–001–MTT; June, 1980.

(60) Alfonso Torres; May 12, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00687–001; October, 1970.

(61) Hong Wei Xian, (aka Harry Zan); October 3, 2011; U.S. District Court, Eastern District of Virginia; Case No. 1:10CR00207–001; December, 1978.

(62) Lian Yang; October 27, 2011; U.S. District Court, Western District of Washington; Case No. 2:11CR00094TSZ–001; February, 1964.

(63) Nguessan Yao; December 15, 2011; U.S. District Court, Northern District of California; Case No. CR–10–00434–002; January, 1955.

(64) Edgar Daniel Zapata; April 30, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00396–001; August, 1980.

As noted above, at the end of the three-year period following the date of this notice, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.*, sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit there from or have a direct or indirect interest therein.

Further, **Federal Register** document 2011–29470, published at 76 FR 70805, Tuesday, November 15, 2011, is corrected on page 70807, line 12 through line 15 to read as follows:

1. Andrew V. ODonnell; August 1, 2011; U.S. District Court, Northern District of Georgia; Case No. 1:10–CR–491–CAP; July, 1977.

That notice of statutory debarment incorrectly identified the debarred party as "Andrew V. O'Donnell" and the Month/Year of birth of the debarred party as "July, 1997."

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: July 17, 2012.

Andrew J. Shapiro,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2012–18043 Filed 7–23–12; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Friday, August 10, 2012, from 9:00 a.m. to 4:00 p.m. The meeting will be opened to the public from 1:00 p.m. to 4:00 p.m.

DATES: The meeting is scheduled for August 10, 2012, unless otherwise notified.

ADDRESSES: The meeting will be held at the University Club Atop Symphony Towers, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Agenda topics to be discussed are:

—Pre-Decisional Deliberations on a draft Letter of Recommendation on U.S. & Foreign Commercial Service - Proposed New Increases in Fees.

—Access to and use of U.S. Small Business Administration State Trade and Export Promotion (STEP) Grants by San Diego-area business.

—Congressional perspective on trade barriers for small and minority business.

—Update on pending trade legislation that would impact small and minority businesses.

Christine L. Turner,

Assistant U.S. Trade Representative, Intergovernmental Affairs and Public Engagement.

[FR Doc. 2012–18016 Filed 7–23–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket DOT–OST–2010–0235]

Application of Star Marianas Air, Inc. for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2012–7–21).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order tentatively finding Star Marianas Air, Inc., fit, willing, and able to provide scheduled passenger service as a commuter air carrier using small aircraft pursuant to Part 135 of the Federal Aviation Regulations.

DATES: Persons wishing to file objections should do so no later than July 31, 2012.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2010–0235 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Catherine J. O'Toole, Air Carrier Fitness Division (X–56, Room W86–489), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: July 17, 2012.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2012–18042 Filed 7–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

ITS Industry Forum on Connected Vehicles: Moving From Research Towards Implementation; Notice of Public Meeting

AGENCY: ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO) will host a free public meeting and webinar to provide updates and promote a lively discussion on the Connected Vehicle Safety, Vehicle-to-Infrastructure, and Testing programs; along with a special session discussing lessons learned in deploying ITS. The public meeting will take place September 25–27, 2012, 9:00 a.m.–4:30 p.m. at the Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, Illinois, USA 60601, 312–565–1234. Persons planning to attend the meeting or participate in the webinar should register online at *www.itsa.org/safetymeeting* no later than August 30, 2012.

The goal of the meeting and webinar is to identify where we are and what remains in getting to the 2013 decision on Vehicle Communications for Safety, discuss what is evolving in terms of a robust Vehicle-to-Infrastructure environment, and identify what we have learned from past ITS deployments that can help with success for the future.

About the Connected Vehicle Research Program at USDOT

Connected Vehicle research at USDOT is a multimodal program that involves using wireless communication between vehicles, infrastructure, and personal communications devices to

improve safety, mobility, and environmental sustainability. To learn more about the Connected Vehicle program please visit *www.its.dot.gov*.

If you have any questions or you need any special accommodations, please contact Adam Hopps at *Ahopps@itsa.org* or 202–680–0091.

Issued in Washington, DC, on the 18th day of July 2012.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2012–17974 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0109]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective July 24, 2012. The exemptions expire on July 24, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

Background

On June 6, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 22 individuals and requested comments from the public (77 FR 33554). The public comment period closed on July 6, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 22 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 22 applicants have had ITDM over a range of 1 to 41 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 6, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or

not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts Jack D. Alt (NH), Hallie L. Ayers (AR), Tony O. Billman (PA), Tracy M. Dowton (MT), Anil D. Gharmalkar (KS), Larry A. Hamilton (MO), Gregory S. Heun (OK), Irene M. Howard (UT), Allen K. Kates (NJ), Andrew L. Lyman (PA), Franklin L. Oberender (IA), Nancy A. Plunk (MO),Victor C. Port (ND), Scott D. Roles (MN), Jeffrey A. Ryan (IA), Keith A. Siekmeier (AK), Tom L. Simmons (IA), James H. Stichberry, Jr. (MD), Loyd J. Wagner (MO), John F. Watson (IN), Melvin E. Welch (NJ), and Leroy R. Wille (IA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 18, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–17976 Filed 7–23–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2012 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Announcement of NMTC allocation availability.

DATES: Electronic applications must be received by 5 p.m. ET on September 12, 2012. Applications sent by mail, facsimile or other form will not be accepted. Please note the Community Development Financial Institutions Fund (CDFI Fund) will only accept applications and attachments (i.e., the CDE's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) in electronic form (see Section IV.D. of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. NMTC allocation applicants that are not yet certified as Community Development Entities (CDEs) must submit an application for CDE certification that is postmarked on or before August 3, 2012 (see Section III of this NOAA for more details).

Executive Summary: This NOAA is issued in connection with the calendar year 2012 allocation round of the New Markets Tax Credit (NMTC) Program, as initially authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108–357), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 108–357), Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), and section 733 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the Act). Through the NMTC Program, the CDFI Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the CDFI Fund announces, subject to Congressional authorization, the availability of up to $5 billion of NMTC investment authority.

In this NOAA, the CDFI Fund specifically addresses how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

I. Allocation Availability Description

A. *Programmatic changes from CY 2011 round:*

1. *Allocation amounts:* As described in Section IIA, the CDFI Fund anticipates that it will provide NMTC allocation awards for not more than $100 million of allocation per Allocatee.

2. *Prior QEI Issuance Requirements:* In order to be eligible to apply for NMTC allocations in the CY 2012 round, as described in Section III.A.2(a), applicants that have received NMTC allocation awards in previous rounds are required to meet minimum Qualified Equity Investment (QEI) issuance thresholds with respect to their prior-year allocations. These thresholds have been revised in comparison to the CY 2011 NOAA.

3. *Updated eligibility data on Low-Income Communities.* As of May 1, 2012, CDEs will be able to use the 2006–2010 American Community Survey (ACS) eligibility data to determine if Qualified Low Income Community Investments (QLICIs) are located in NMTC-eligible 2010 census tracts. The ACS has replaced the decennial Census long form data as the source of tract-level data on income and poverty for all states, Puerto Rico, and the District of Columbia. The income and poverty data provided by the 2006–2010 ACS data determines whether the 2010 census tracts will qualify as NMTC-eligible Low-Income Communities. Updating Low-Income Community eligibility ensures the CDFI Fund's NMTC Program will continue to effectively target Low-Income Communities based on the most current information.

Additionally, the 2006–2010 ACS eligibility data will define Non-Metropolitan Counties as counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied to the 2010 census tracts.

Timeline for Using NMTC Program Eligibility Data: CDEs that have been awarded allocation authority in the CY 2011 round or earlier and have QLICIs that are closed before May 1, 2012 must use 2000 Census data for determining eligibility. QLICIs closed between May 1, 2012 and June 30, 2013 may use either 2000 Census data or 2006–2010

ACS data for determining eligibility. QLICIs closed on or after July 1, 2013 must use 2006–2010 ACS data for determining eligibility. The CDFI Fund will continue to use 20 percent as the appropriate benchmark for ensuring a proportional allocation of QLICIs in Non-Metropolitan areas.

4. An organization that is certified by the CDFI Fund as a Subsidiary CDE will not be permitted to submit an allocation application under this NOAA.

B. *Program guidance and regulations:* This NOAA provides guidance for the application and allocation of NMTCs for the CY 2012 round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the CDFI Fund on how an entity may apply to become certified as a CDE (66 **Federal Register** 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004), as amended and related guidance, notices and other publications; and (iii) the application and related materials for the CY 2012 NMTC Program allocation round. All such materials may be found on the CDFI Fund's Web site at *http://www.cdfifund.gov*. The CDFI Fund encourages applicants to review these documents. Capitalized terms used, but not defined, in this NOAA shall have the respective meanings assigned to them in the allocation application, IRC § 45D or the IRS regulations. In the event of any inconsistency between the allocation application, IRC § 45D or the IRS regulations, the provisions of IRC § 45D and the IRS regulations shall govern.

II. Allocation Information

A. *Allocation amounts:* Pursuant to the Act, the CDFI Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $5.0 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the CDFI Fund anticipates that it will not issue more than $100 million in tax credit investment authority per Allocatee. The CDFI Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the CDFI Fund deem it appropriate. In order to receive an allocation in excess of the $100 million cap, an applicant, at a minimum, will need to demonstrate that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; and/or (ii) its strategy will produce extraordinary community outcomes. The CDFI Fund reserves the right to allocate NMTC authority to any, all, or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

B. *Types of awards:* NMTC Program awards are made in the form of allocations of tax credit investment authority.

C. *Allocation Agreement:* Each Allocatee under this NOAA must sign an Allocation Agreement, which must be countersigned by the CDFI Fund, before the NMTC allocation is effective. The Allocation Agreement contains the terms and conditions of the allocation. For further information, see Section VI of this NOAA.

III. Eligibility

A. *Eligible applicants:* IRC § 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the available NMTC investment authority.

1. *CDE certification:* For purposes of this NOAA, the CDFI Fund will not consider an application for an allocation of NMTCs unless: (a) The applicant is certified as a CDE at the time the CDFI Fund receives its NMTC Program allocation application; or (b) the applicant submits an application for certification as a CDE that is postmarked on or before August 3, 2012. Applicants for certification may obtain a CDE certification application through the CDFI Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form. An applicant that is a Community Development Financial Institution (CDFI) or a Specialized Small Business Investment Company (SSBIC) does not need to submit a CDE certification application; however, it must register as a CDE on the CDFI Fund's Web site on or before 5 p.m. ET on August 3, 2012. See Section IV.D.1(b) of this NOAA for further requirements relating to postmarks.

The CDFI Fund will not provide NMTC allocation authority to applicants that are not certified as CDEs or to entities that are certified as Subsidiary CDEs.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such a change to the CDFI Fund, and the request must be received by the CDFI Fund by 5:00 p.m. ET on August 3, 2012. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be sent by email to *ccme@cdfi.treas.gov*.

2. *Prior awardees or Allocatees:* Applicants must be aware that success in a prior round of any of the CDFI Fund's programs is not indicative of success under this NOAA. For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC allocation application materials, or any entity otherwise identified as an Affiliate by the applicant in its NMTC allocation application materials. Prior awardees of any CDFI Fund program are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements:* The following describes the QEI issuance requirements applicable to prior Allocatees.

A prior Allocatee in the CY 2006 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has issued and received funds in-hand from its investors for at least 95 percent of its QEIs relating to its CY 2006 NMTC allocation.

A prior Allocatee in the CY 2007 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has: (i) Issued and received funds in-hand from its investors for at least 80 percent of its QEIs relating to its CY 2007 NMTC allocation; or (ii) issued and received funds in-hand from its investors for at least 70 percent of its QEIs and that at least 100 percent of its total CY 2007 NMTC allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee in the CY 2008 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has: (i) Issued and received funds in-hand from its investors for at least 70 percent of its QEIs relating to its CY 2008 NMTC

allocation; or (ii) issued and received funds in-hand from its investors for at least 60 percent of its QEIs and that at least 80 percent of its total CY 2008 NMTC allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee in the CY 2009 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has: (i) Issued and received funds in-hand from its investors for at least 60 percent of its QEIs relating to its CY 2009 NMTC allocation; or (ii) issued and received funds in-hand from its investors for at least 50 percent of its QEIs and that at least 80 percent of its total CY 2009 NMTC allocation has been exchanged for funds in-hand from investors, or has been committed by its investors.

A prior Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2010 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has: (i) Issued and received funds in-hand from its investors for at least 50 percent of its QEIs relating to its CY 2010 NMTC allocation; or (ii) issued and received funds in-hand from its investors for at least 40 percent of its QEIs and that at least 60 percent of its total CY 2010 NMTC allocation has been exchanged for funds in-hand from investors, or has been committed by its investors. A prior Rural CDE Allocatee in the CY 2010 is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has: (i) issued and received funds in-hand from its investors for at least 30 percent of its QEIs relating to its CY 2010 NMTC allocation.

A prior Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2011 round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has: (i) Issued and received funds in-hand from its investors for at least 30 percent of its QEIs relating to its CY 2011 NMTC allocation; or (ii) issued and received funds in-hand from its investors for at least 20 percent of its QEIs and that at least 50 percent of its total CY 2011 NMTC allocation has been exchanged for funds in-hand from investors, or has been committed by its investors. A Rural CDE is not required to meet the above QEI issuance and commitment thresholds with regard to its CY 2011 NMTC allocation award.

In addition to the requirements described above, an entity is not eligible to receive a NMTC allocation pursuant to this NOAA if an Affiliate of the applicant is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an applicant has received multiple NMTC allocation awards between the CY 2006 and the CY 2011, the applicant shall be deemed to be eligible to apply for a NMTC allocation pursuant to this NOAA if the applicant is able to affirmatively demonstrate that, as of 11:59 p.m. ET on October 31, 2012, it has issued and received funds in-hand from its investors for at least 90 percent of its QEIs relating to its cumulative allocation amounts from these prior NMTC Program rounds. Rural CDEs that received allocations under the CY 2010 round may choose to exclude such allocations from this cumulative calculation, provided that the Allocatee has issued and received funds in-hand from its investors for at least 20 percent of its QEIs relating to its CY 2010 allocation. Rural CDEs that received allocations under the CY 2011 round may choose to exclude such allocation from this cumulative calculation.

For purposes of this section of the NOAA, the CDFI Fund will only recognize as "issued" those QEIs that have been finalized in the CDFI Fund's Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary transferees, if any, are advised to access ATS to record each QEI that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, "committed" QEIs are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) Commits to make an investment in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a QEI; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than October 31, 2014.

The applicant will be required, upon notification from the CDFI Fund, to submit adequate documentation to substantiate the required issuances of and commitments for QEIs.

Applicants should be aware that these QEI issuance requirements represent the minimum threshold requirements that must be met in order to submit an application for assistance under this NOAA. As stated in Section V.B.2 of this NOAA, the CDFI Fund reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process—including an applicant's track record of raising QEIs and/or deploying its QLICIs.

Prior Allocatees that require any action by the CDFI Fund (i.e., certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit their Certification Application for subsidiary CDEs by no later than August 1, 2012 and Allocation Agreement Amendment requests by no later than October 2, 2012 in order to guarantee that the CDFI Fund completes all necessary approvals prior to October 31, 2012. Applicants for certification may obtain a CDE certification application through the CDFI Fund's Web site at *http://www.cdfifund.gov.* Applications for CDE certification must be submitted as instructed in the application form.

(b) *Failure to meet reporting requirements:* The CDFI Fund will not consider an application submitted by an applicant if the applicant or any of its Affiliates is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the application deadline of this NOAA. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements.

(c) *Pending resolution of noncompliance:* If an applicant is a prior awardee or Allocatee under any CDFI Fund program and if: (i) It has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the applicant's application under this

NOAA pending full resolution of the noncompliance, in the sole determination of the CDFI Fund. Further, if an Affiliate of the applicant is a prior CDFI Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the applicant's application under this NOAA pending full resolution of the noncompliance, in the sole determination of the CDFI Fund.

Notwithstanding the above, any applicant or Affiliate that is a prior Allocatee that is in non-compliance with section 3.2(e) of its Allocation Agreement at the time of the application deadline, but otherwise meets the QEI Issuance in section A.2(a) above, must be compliant with Section 3.2(e) of its Allocation Agreement by 11:59 p.m. ET on December 31, 2012.

(d) *Default Status:* The CDFI Fund will not consider an application submitted by an applicant that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Applicant is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Applicant; and (iii) the application date of the NOAA is within a period of time specified in such notification throughout which any new application from the applicant to the CDFI Fund for an award, allocation, or assistance is prohibited.

Further, the CDFI Fund will not consider an application submitted by an applicant for which there is an Affiliate that is a prior awardee or Allocatee under any CDFI Fund Program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Affiliate is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Affiliate; and (iii) the application date of the NOAA is within a period of time specified in such notification throughout which any new application from the Affiliate to the CDFI Fund for an award, allocation, or assistance is prohibited.

(e) *Undisbursed award funds:* The CDFI Fund will not consider an application submitted by an applicant that is a prior awardee under any CDFI Fund program if the applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOAA. Furthermore, an entity is not eligible to apply for an award pursuant to this NOAA if an Affiliate of the applicant is a prior awardee under any CDFI Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOAA. In a case where an Affiliate of the applicant is a prior awardee under any CDFI Fund program and has a balance of undisbursed award funds under said prior award(s) as of the applicable application deadline of this NOAA, the CDFI Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the Bank Enterprise Award (BEA) Program, only awards made to the applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included ("includable BEA awards"). Thus, for purposes of this NOAA, undisbursed BEA Program award funds are the amount of FYs 2007, 2008, 2009 awards that remain undisbursed as of the application deadline of this NOAA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives (NI), only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the CDFI Fund) two to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included ("includable CDFI/NI awards"). Thus, for purposes of this NOAA, undisbursed CDFI Program and NI awards are the amount of FYs 2007, 2008, 2009 and 2010 awards that remain undisbursed as of the application deadline of this NOAA.

To calculate total includable BEA/CDFI/NI awards: amounts that are undisbursed as of the application deadline of this NOAA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation in the 2012 Allocation Application Q&A document, available on the CDFI Fund's Web site.

The "undisbursed award funds" calculation does not include: (i) NMTC allocation authority; (ii) any award funds for which the CDFI Fund received a full and complete disbursement request from the awardee by the applicable application deadline of this NOAA; (iii) any award funds for an award that has been terminated, in writing, by the CDFI Fund or deobligated by the CDFI Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The CDFI Fund strongly encourages Applicants requesting disbursements of "undisbursed funds" from prior awards to provide the CDFI Fund with a complete disbursement request at least 30 business days prior to the application deadline of this NOAA.

(f) *Contact the CDFI Fund:* Accordingly, Applicants that are prior awardees and/or Allocatees under any other CDFI Fund program are advised to: (i) Comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance questions should be directed to the Compliance Manager by email at *ccme@cdfi.treas.gov*, by telephone at (202) 622–6330. All disbursement questions should be directed to the Charles McGee, Senior Program Analyst by telephone at 202–622–8453 or via email at *mcgeec@cdfi.treas.gov*. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

The CDFI Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of publication of this NOAA through September 10, 2012 (two days before the application deadline). The CDFI Fund will not respond to Applicants' reporting, compliance, CDE certification or disbursement phone calls or email inquiries that are received after 5 p.m. ET on September 10, 2012 until after the funding application deadline of September 12, 2012.

3. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply for NMTC allocation authority, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC allocation must demonstrate, prior to entering into an Allocation Agreement with the CDFI Fund, that: (i) it controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to

transfer the full amount of any NMTC allocation it receives to said Subsidiary.

An applicant wishing to transfer all or a portion of its NMTC allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the CDFI Fund. However, the Subsidiary entities must be certified as CDEs by the CDFI Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing. Before the NMTC allocation transfer may occur it must be pre-approved by the CDFI Fund, in its sole discretion.

The CDFI Fund strongly encourages a non-profit applicant to submit a CDE certification application to the CDFI Fund on behalf of the Subsidiary within 60 days after the non-profit applicant receives the draft Allocation Agreement from the CDFI Fund, as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the CDFI Fund. A non-profit applicant that fails to submit a certification application for one or more for-profit subsidiaries within 60 days of receiving the draft Allocation Agreement from the CDFI Fund is subject to the CDFI Fund rescinding the award.

4. *Entities that submit applications together with Affiliates; applications from common enterprises:* (a) As part of the allocation application review process, the CDFI Fund considers whether applicants are Affiliates, as such term is defined in the allocation application. If an applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the CDFI Fund reserves the right either to reject all such applications received or to select a single application as the only application considered for an allocation. In the case of governmental entities, the CDFI Fund may accept applications submitted by Affiliated entities, but only to the extent the CDFI Fund determines that the business strategies and/or activities described in such applications, submitted by separate entities, are distinctly dissimilar and are operated and/or managed by distinctly dissimilar boards and staff, including identified consultants. In such cases, the CDFI Fund reserves the right to limit award amounts to such entities to ensure that the entities do not collectively receive more than the $100 million cap.

For purposes of this NOAA, in addition to assessing whether applicants meet the definition of the term "Affiliate" found in the allocation application, the CDFI Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated and/or managed as a common enterprise that, in fact or effect, may be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related, in fact or effect, they may be viewed as substantially identical applications. In such cases, the CDFI Fund reserves the right either to reject all applications received from all such entities; to select a single application as the only one that will be considered for an allocation; and, in the event that an Application is selected to receive an allocation award, to deem certain activities ineligible. These requirements shall apply to all applicants, including those that are Affiliated with governmental entities.

(b) Furthermore, an applicant that receives an allocation in this allocation round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another applicant that receives an allocation in this allocation round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly Controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B of this NOAA and additional application guidance materials on the CDFI Fund's Web site at *http://www.cdfifund.gov* for more details).

5. *Entities created as a series of funds:* An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it may submit a single CDE certification application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC allocations it receives to one or more of its funds unless the transfer is pre-approved by the CDFI Fund, in its sole discretion, which will be a condition of the Allocation Agreement.

6. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC allocation for the same investment in a CDE.

IV. Application and Submission Information

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the CDFI Fund Web site. Following the publication of this NOAA, the CDFI Fund will make the electronic allocation application available on its Web site at *http://www.cdfifund.gov.* Applications sent by mail, facsimile or other form will not be accepted. Please note the CDFI Fund will only accept the application and attachments (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) in electronic form.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation. Electronic applications must be submitted solely by using the format made available at the CDFI Fund's Web site. Additional information, including instructions relating to the submission of supporting information (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor

letters and organizational charts), is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS) and assigned to the applicant and, if applicable, its Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the CDFI Fund. For more information on obtaining an EIN, please contact the IRS at (800) 829–4933 or *www.irs.gov*.

An applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.4 of this NOAA, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications except as outlined above. Once an application is submitted, an applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically. Applications sent by facsimile or by email will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the CDFI Fund in the implementation of electronic reporting requirements.

1. *Electronic applications:* Electronic applications must be submitted solely by using the CDFI Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. The CDFI Fund recommends use of Internet Explorer version 8 on Windows XP, and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Use of other browsers (i.e., Firefox), other versions of Internet Explorer, or other systems (i.e., Mac) might result in problems during submission of the application. The CDFI Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of supporting information (i.e., the applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) is set forth in further detail in the electronic application.

D. *Application submission dates and times:*

1. *Application deadlines:*

(a) *Electronic applications:* must be received by 5:00 p.m. ET on September 12, 2012. Electronic applications cannot be transmitted or received after 5:00 p.m. ET on September 12, 2012. In addition, applicants must separately submit supporting information (i.e., the applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) via their myCDFIFund account. The applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts must be submitted on or before 11:59 p.m. on September 14, 2012. Attachments may not exceed a size limit of 5 megabytes (MB). See application instructions, provided in the electronic application and the 2012 Allocation Application Q&A, for further detail. Applications and other required documents received after this date and time will be rejected. If the applicant's authorized representative signature page is not received by the deadline specified above, the CDFI Fund reserves the right to reject the application. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) *Postmark:* For purposes of this NOAA, the term "postmark" is defined by 26 CFR 301.7502–1. In general, the CDFI Fund will require that the postmarked document bears a postmark date that is on or before the applicable deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002–62, 2002–2 C.B. 574.

E. *Intergovernmental Review:* Not applicable.

F. *Funding Restrictions:* For allowable uses of investment proceeds related to a NMTC allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published December 28, 2004) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. *Paperwork Reduction:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559–0016.

V. Application Review Information

There are two parts to the substantive review process for each allocation application: Phase 1 and Phase 2. In Phase 1, the CDFI Fund will evaluate each application, assigning points and numeric scores according to the criteria described below. In Phase 2, the CDFI Fund will rank applicants in accordance with the procedures set forth below.

A. *Criteria:*

1. *Business Strategy* (25-point maximum): (a) When assessing an applicant's business strategy, reviewers will consider, among other things: the applicant's products, services, and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the applicant's pipeline of potential investments; the extent to which the applicant intends to make Qualified Low-Income Community Investments (QLICIs) in one or more businesses in which persons unrelated to the entity hold a majority equity interest; how NMTCs will enable the applicant to create additional value to its financing activities in Low-Income Communities; and the extent to which applicants that otherwise have notable relationships with the QALICBs financed will create benefits (beyond those created in the normal course of a NMTC transaction) to Low-Income Communities.

Under the Business Strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which are flexible or non-traditional in form and on better terms than available in the marketplace. An applicant will also score well to the extent that, among other things, it: (i) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of QEIs; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing QEIs and making the related QLICIs in a time period that is significantly shorter than the 5-year period permitted under IRC § 45D(b)(1); (iv) in the case of an applicant proposing to purchase loans from CDEs,

the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) *Priority Points:* In addition, as provided by IRC § 45D(f)(2), the CDFI Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the CDFI Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the CDFI Fund will give five (5) additional points to any applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an applicant (or the applicant's subsidiary CDEs) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (i.e., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The CDFI Fund will factor in an applicant's priority points when ranking applicants during Phase 2 of the review process, as described below.

2. *Community Outcomes* (25-point maximum): In assessing the potential benefits to Low-Income Communities that may result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to: (a) Achieve significant and measurable community development outcomes in its Low-Income Communities; (b) invest in particularly economically distressed markets: (c) engage with local communities regarding investments; and (d) demonstrate a track record of investing in businesses that spur additional private capital investment in Low-Income Communities. An applicant will generally score well under this section to the extent that: (i) it articulates how its strategy is likely to produce significant and measurable community development outcomes that would not be achieved without NMTCs; (ii) it is working in particularly economically distressed or otherwise underserved communities; (iii) its activities are part of a broader neighborhood revitalization strategy; (iv) it ensures that an investment into a project or business is supported by and will be beneficial to the surrounding community; and (v) it is likely to engage in activities that will spur additional private capital investment.

3. *Management Capacity* (25-point maximum). In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the level of involvement of community representatives in the Governing Board and/or Advisory Board in approving investment criteria or decisions.

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of QEIs; (b) asset and risk management; and (c) fulfilling government compliance requirements, particularly tax credit program compliance. An applicant will also score well to the extent: it demonstrates strong financial health and a high likelihood of remaining a going-concern; has policies and systems in place to ensure ongoing compliance with NMTC Program requirements; has Low-Income Community representatives in the Governing Board and/or Advisory Board that play an active role in designing or implementing its investment criteria and/or decisions; and, if it is a Federally-insured financial institution, its most recent Community Reinvestment Act (CRA) rating was "outstanding."

4. *Capitalization Strategy* (25-point maximum): When assessing an applicant's capitalization strategy, reviewers will consider, among other things: the key personnel of the applicant (or Controlling Entity) and their track record of raising capital, particularly from for-profit investors; the extent to which the applicant has secured investments, commitments to invest in NMTC, or indications of investor interest commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the distribution of the economic benefits of the tax credit; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations; the likelihood the applicant will raise sufficient capital to finance its cost of operations; and the applicant's timeline for utilizing an NMTC allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of QEIs it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to a QALICB; (d) it is likely to secure capital to finance its cost of operations consistent with the applicant's overall business strategy and timeline for making investments; and (e) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the applicant or from Affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by its investor(s) or Affiliated entities and/or will target its activities to areas of greater economic distress than those currently targeted by the investor or Affiliated entities.

B. *Review and selection process:* All allocation applications will be reviewed for eligibility and completeness. The CDFI Fund may consult with the IRS on the eligibility requirements under IRC § 45D. To be complete, the application

must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the CDFI Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

1. *Phase 1:* Reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold *and* exceed a minimum aggregate section score threshold in each of the four application sections (Business Strategy, Community Outcomes, Management Capacity, and Capitalization Strategy) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application scored sections), varies significantly from other reviewers' total base scores or section scores for such application, the CDFI Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

2. *Phase 2:* Once the CDFI Fund has determined which applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the CDFI Fund will rank applicants on the basis of their combined scores in the Business Strategy and Community Outcomes sections of the application and will make adjustments to each applicant's priority points so that these points maintain the same relative weight in the ranking of applicant scores in Phase 2 as in Phase 1. The CDFI Fund will award allocations in the order of this "Final Rank Score," subject to applicants' meeting all other eligibility requirements; provided, however, that the CDFI Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process. Most notably, in the cases of applicants (or their Affiliates) that are prior year Allocatees, the CDFI Fund will review the activities of the prior year Allocatee to determine whether the entity has: (a) effectively utilized its prior-year allocations; and (b) substantiated a need for additional allocation authority.

3. *Outstanding Reports:* In the case of an applicant, or Affiliates, that has previously received an award or allocation from the CDFI Fund through any CDFI Fund program, the CDFI Fund will deduct points for the applicant's (or its Affiliate's) failure to meet the reporting deadlines set forth in any assistance, award or Allocation Agreement(s) with the CDFI Fund during the entity's two complete fiscal years prior to the application deadline of this NOAA (generally FY 2010 and FY2011).

C. *Allocations serving Non-Metropolitan counties:* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), the CDFI Fund shall ensure that non-metropolitan counties receive a proportional allocation of Qualified Equity Investments (QEIs) under the NMTC Program. To this end, the CDFI Fund will ensure that the proportion of Allocatees that are Rural CDEs is, at a minimum, equal to the proportion of applicants in the Phase 2 review pool that are Rural CDEs. The CDFI Fund will also endeavor to ensure that 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-Metropolitan counties. A Rural CDE is one that has over the past five years dedicated at least 50 percent of its direct financing dollars to Non-Metropolitan counties and has committed that at least 50 percent of its NMTC financing activities will be deployed in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied using 2010 census tracts.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with "preliminary" awards, in descending order of Final Rank Score, until the available allocation authority is fulfilled. Once these "preliminary" award amounts are determined, the CDFI Fund will then analyze the Allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The CDFI Fund will first examine the "preliminary" awards and Allocatees to determine whether the percentage of Allocatees that are Rural CDEs is, at a minimum, equal to the percentage of applicants in the Phase 2 review pool that are Rural CDEs. If this objective is not achieved, the CDFI Fund will provide awards to additional Rural CDEs from the Phase 2 pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional Allocatees within the available allocation limitations, a formula reduction will be applied uniformly to the allocation amount for all Allocatees in the pool.

The CDFI Fund will then determine whether the pool of Allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The CDFI Fund will first apply the "minimum" percentage of QLICIs that Allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each Allocatee (less whatever percentage the Allocatee indicated would be retained for non-QLICI activities), and total these figures for all Allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the Allocatees, then the pool is considered balanced and the CDFI Fund will proceed with the allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the Allocatees, the CDFI Fund will consider requiring any or all of the Allocatees to direct up to the "maximum" percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties, taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties. If the CDFI Fund cannot meet the goal of 20 percent of QLICIs in Non-Metropolitan counties, the CDFI Fund may add additional Rural CDEs (in descending order of final rank score) to the Allocatee pool. In order to accommodate any additional Allocatees within the allocation limitations, a reduction would be applied, in as uniform a manner as possible, to the allocation amount for all Allocatees in the pool that have not committed to investing at least 20 percent of their QLICIs in Non-Metropolitan counties.

D. *Questions:* All outstanding reports or compliance questions should be directed to the Certifications and Compliance Manager by email at *ccme@cdfi.treas.gov;* by telephone at (202) 622–6330; or by mail to Department of the Treasury, CDFI Fund, 1500 Pennsylvania Avenue NW., Washington, DC 20005. The CDFI Fund will respond to reporting or compliance questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of the publication of this NOAA through September 10, 2012. The CDFI Fund will not respond to reporting or compliance phone calls or email inquiries that are received after 5:00 p.m. ET on September 10, 2012 until

after the funding application deadline of September 12, 2012.

E. *Right of rejection:* The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund awardee, if such applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an Affiliate of the applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the CDFI Fund.

The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings and markets served) set forth in the allocation application(s) related to such prior allocation(s). The CDFI Fund also reserves the right to reject any NMTC allocation application in the case of an Affiliate of the applicant that is a prior CDFI Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The CDFI Fund reserves the right to reject a NMTC allocation application if information (including administrative errors) comes to the attention of the CDFI Fund that adversely affects an applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, adversely affects the CDFI Fund's prior determinations of CDE certification, or indicates fraud or mismanagement on the part of an applicant or the Controlling Entity, if such fraud or mismanagement by the Controlling Entity would hinder the applicant's ability to perform under the Allocation Agreement. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the CDFI Fund may permit the Allocation Recommendation Panel member(s) to make telephone calls to applicants for the sole purpose of obtaining, clarifying or confirming application information. In no event shall such contact be construed to permit an applicant to change any element of its application. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the CDFI Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the CDFI Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including, without limitation, eligibility under IRC § 45D, the reviewers' scores and the amount of allocation authority available. In the case of applicants (or Affiliates of applicants) that are regulated by the Federal government or a State agency (or comparable entity), the CDFI Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. In the case of applicants (or Affiliates of applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the CDFI Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The CDFI Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the CDFI Fund, in its sole discretion, related to the applicant, Affiliates, the applicant's Controlling Entity and the officers, directors, owners, partners and key employees of each.

Each applicant will be informed of the CDFI Fund's award decision through an electronic notification whether selected for an allocation (see Section VI.A. of this NOAA) or not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on their applications. This feedback will be provided in a format and within a timeframe to be determined by the CDFI Fund, based on available resources.

The CDFI Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

There is no right to appeal the CDFI Fund's NMTC allocation decisions. The CDFI Fund's NMTC allocation decisions are final.

VI. Award Administration Information

1. *Failure to meet reporting requirements:* If an Allocatee, or an Affiliate of an Allocatee, is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the award notification or thereafter, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on an Allocatee's ability to issue QEIs to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation or award agreement(s). Please note that the CDFI Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior awardee or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the allocation made under this NOAA.

2. *Pending resolution of noncompliance:* If an Allocatee is a prior awardee or Allocatee under any CDFI Fund program and if: (i) it has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. Further, if an Affiliate of an Allocatee is a prior CDFI Fund awardee or Allocatee and if such entity: (i) Has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its

previous assistance, award or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award notification made under this NOAA.

3. *Default status:* If, at any time prior to entering into an Allocation Agreement through this NOAA, the CDFI Fund has made a determination that an Allocatee that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the Allocatee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has cured the default by taking actions necessary as specified by the CDFI Fund and within the timeframe specified by the CDFI Fund. Further, if at any time prior to entering into an Allocation Agreement through this NOAA, the CDFI Fund has made a determination that an Affiliate of the Allocatee is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is in default of a previously executed assistance, allocation or award agreement(s) and has provided written notification of such determination to the defaulting entity, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, until said prior awardee or Allocatee has cured the default by taking actions necessary as specified by the CDFI Fund and within the timeframe specified by the CDFI Fund. If said prior awardee or Allocatee is unable to meet this requirement, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

4. *Termination in default:* If prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Allocatee that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA. Furthermore, if prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Affiliate of the Allocatee is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program whose award or allocation was terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to the defaulting entity; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

5. *Allocation Agreement:* Each applicant that is selected to receive a NMTC allocation (including the applicant's Subsidiary transferees) must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC allocation; (ii) the approved uses of the awarded NMTC allocation (i.e., loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) the time period by which the applicant may obtain QEIs from investors; (v) reporting requirements for all applicants receiving NMTC allocations; and (vi) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC allocation must furnish to the CDFI Fund an opinion from its legal counsel or a similar certification, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary transferees, the CDFI Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The CDFI Fund reserves the right, in its sole discretion, to rescind its allocation award if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the CDFI Fund with any other requested documentation, within the deadlines set by the CDFI Fund.

6. *Fees:* The CDFI Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC allocations. Prior to imposing any such fee, the CDFI Fund will publish additional information concerning the nature and amount of the fee.

7. *Reporting:* The CDFI Fund will collect information, on at least an annual basis from all applicants that are

awarded NMTC allocations and/or are recipients of QLICIs, including such audited financial statements and opinions of counsel as the CDFI Fund deems necessary or desirable, in its sole discretion. The CDFI Fund will use such information to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The CDFI Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

VII. Agency Contacts

The CDFI Fund will provide programmatic and information technology support related to the allocation application between the hours of 9:00 a.m. and 5:00 p.m. ET through September 10, 2012. The CDFI Fund will not respond to phone calls or emails concerning the application that are received after 5 p.m. ET on September 10, 2012 until after the allocation application deadline of September 12, 2012. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov*. The CDFI Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 622–2455 or by email at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the CDFI Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by email at *cdfihelp@cdfi.treas.gov*; or by telephone at (202) 622–6355. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by email at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

VIII. Information Sessions

In connection with this NOAA, the CDFI Fund may conduct an information session that will be produced in Washington, DC and broadcast over the Internet via Webcasting as well as telephone conference calls. For further information on these upcoming information sessions, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov* or call the CDFI Fund at (202) 927–6224.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: July 13, 2012.

Dennis Nolan,

Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 2012–17602 Filed 7–19–12; 4:15 pm]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Minority Bank Deposit Program (MBDP) Certification Form for Admission

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 3144 "Minority Bank Deposit Program (MBDP) Certification Form for Admission".

DATES: Written comments should be received on or before September 24, 2012.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mary Bailey, Bank Policy and Oversight Division, 401 14th Street SW., Room 317, Washington, DC 20227, (202) 874–7055.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission.

OMB Number: 1510–0048.

Form Number: FMS 3144.

Abstract: This form is used by financial institutions to apply for participation in the Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 17, 2012.

Kristine Conrath,

Assistant Commissioner, Federal Finance.

[FR Doc. 2012–17940 Filed 7–23–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of 1 Individual and 2 Entities Designated Pursuant to Executive Order 13315

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the names of 1 individual and 2 entities whose property and interests in property are blocked pursuant to Executive Order 13315 of August 28, 2003, "Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions" from the list of Specially Designated Nationals and Blocked Persons ("SDN List").

DATES: The removal of these individual and entities from the SDN List is effective as of July 17, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On August 28, 2003, the President issued Executive Order 13315 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, section 5 of the United Nations Participation Act, as amended, 22 U.S.C. 287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13315.

The Department of the Treasury's Office of Foreign Assets Control has determined that these 1 individual and 2 entities should be removed from the SDN List.

The following designations are removed from the SDN List:

Individual

1. KARAM, Nabil Victor, c/o ALFA COMPANY LIMITED FOR INTERNATIONAL TRADING AND MARKETING, P.O. Box 212953, Amman 11121, Jordan; c/o ALFA COMPANY LIMITED FOR INTERNATIONAL TRADING AND MARKETING, P.O. Box 910606, Amman 11191, Jordan; c/o TRADING AND TRANSPORT SERVICES, Al-Razi Medical Complex, Jabal Al-Hussein, Amman, Jordan; c/o TRADING AND TRANSPORT SERVICES, P.O. Box 212953, Amman 11121, Jordan; c/o TRADING AND TRANSPORT SERVICES, P.O. Box 910606, Amman 11191, Jordan; DOB 1954; nationality Lebanon (individual) [IRAQ2].

Entities

1. ALFA COMPANY LIMITED FOR INTERNATIONAL TRADING AND MARKETING (a.k.a. ALFA INVESTMENT AND INTERNATIONAL TRADING COMPANY; a.k.a. ALFA TRADING COMPANY), P.O. Box 910606, Amman 11191, Jordan [IRAQ2].
2. TRADING AND TRANSPORT SERVICES COMPANY, LTD., Al-Razi Medical Complex, Jabal Al-Hussein, Amman, Jordan; P.O. Box 212953, Amman 11121, Jordan; P.O. Box 910606, Amman 11191, Jordan [IRAQ2].

The removal of these individual and entities names from the SDN List is effective as of July 17, 2012. All property and interests in property of the 1 individual and 2 entities that are in or hereafter come within the United States or the possession or control of United States persons are now blocked.

Dated: July 17, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–18030 Filed 7–23–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8903

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8903, Domestic Production Activities Deduction.

DATES: Written comments should be received on or before September 24, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Domestic Production Activities Deduction.

OMB Number: 1545–1984.

Form Number: 8903.

Abstract: Taxpayers will use the new Form 8903 and related instructions to calculate the domestic production activities deduction.

Current Actions: Burden hours increased by 948,000 hours due to an increase of 13 line items.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 300,000.

Estimated Time per Response: 24 hours, 40 minutes.

Estimated Total Annual Burden Hours: 7,398,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 18, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–17963 Filed 7–23–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request by owner or person entitled to payment or reissue of United States Savings Bonds/Notes deposited in safekeeping when original custody receipts are not available.

DATES: Written comments should be received on or before September 25, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Request by owner or person entitled to payment or reissue of United States Savings Bonds/Notes deposited in safekeeping when original custody receipts are not available.

OMB Number: 1535–0063.

Form Number: PD F 4239.

Abstract: The information is requested to establish ownership and request reissue or payment when original custody receipts are not available.

Current Actions: None.

Type of Review: Revision.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 9,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–18036 Filed 7–23–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the electronic process for selling/issuing, servicing, and making payments on or redeeming U.S. Treasury securities.

DATES: Written comments should be received on or before September 25, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: TreasuryDirect.

OMB Number: 1535–0138.

Abstract: The information is requested to establish a new account and process any associated transactions.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2.06 million.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 97,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–18037 Filed 7–23–12; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2009–0059; 4500030115]

RIN 1018–AV77

Endangered and Threatened Wildlife and Plants; Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (We or Service), determine endangered status for the following six South American bird species (collectively referred to as species for purposes of this final rule) under the Endangered Species Act of 1973, as amended (Act): Ash-breasted tit-tyrant *(Anairetes alpinus)*, Junín grebe *(Podiceps taczanowskii)*, Junín rail *(Laterallus tuerosi)*, Peruvian plantcutter *(Phytotoma raimondii)*, royal cinclodes *(Cinclodes aricomae)*, and white-browed tit-spinetail *(Leptasthenura xenothorax)*. These species are in danger of extinction throughout all of their ranges. All six species are native to Peru. The ash-breasted tit-tyrant and royal cinclodes are also native to Bolivia.

DATES: This rule becomes effective August 23, 2012.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov*. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are available for public inspection at *http://www.regulations.gov* or by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Endangered Species Program, 4401 N. Fairfax Drive, Suite 400, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

On January 5, 2010, we published a proposed rule (75 FR 606) to list these six foreign bird species as endangered: Ash-breasted tit-tyrant, Junín grebe, Junín rail, Peruvian plantcutter, royal cinclodes, and white-browed tit-spinetail. These species are all native to Peru. The ash-breasted tit-tyrant and royal cinclodes are also native to Bolivia. Each of these six species is affected by the loss and degradation of habitat. In addition to severely contracted ranges and distributions of these species, their small, declining populations are an additional threat to their survival.

This action is authorized by the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*), as amended. It affects part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations.

These six foreign bird species will be listed as endangered under the Act.

Background

On January 5, 2010, we published a proposed rule (75 FR 606) to list these six species as endangered: Ash-breasted tit-tyrant *(Anairetes alpinus)*, Junín grebe *(Podiceps taczanowskii)*, Junín rail *(Laterallus tuerosi)*, Peruvian plantcutter *(Phytotoma raimondii)*, royal cinclodes *(Cinclodes aricomae)*, and white-browed tit-spinetail *(Leptasthenura xenothorax)*. These species are all native to Peru. The ash-breasted tit-tyrant and royal cinclodes are also native to Bolivia.

We opened the public comment period on the proposed rule for 60 days, which ended March 8, 2010, to allow all interested parties an opportunity to comment on the proposed rule.

We are addressing these six species under a single rule for efficiency. Each of these species is affected by similar threats. The major threat to these species is the loss and degradation of habitat. In addition to severely contracted ranges and distributions of these species, their small, declining populations are an additional threat. In this rule, we combined the evaluation of species that face similar threats within the same general habitat type and geographic area into one section to maximize our limited staff resources.

Previous Federal Actions

On May 6, 1991, we received a petition (the 1991 petition) from the International Council for Bird Preservation (ICBP) to add 53 foreign bird species to the List of Endangered and Threatened Wildlife, including the six Peruvian bird species that are the subject of this proposed rule. In response to the 1991 petition, we published a substantial 90-day finding on December 16, 1991 (56 FR 65207), for all 53 species and initiated a status review. On March 28, 1994 (59 FR 14496), we published a 12-month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act (which included 15 species from the 1991 petition). In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the six Peruvian bird species that are the subject of this proposed rule, was warranted but precluded by higher priority listing actions. We made a subsequent warranted-but-precluded finding for all outstanding foreign species from the 1991 petition, including the six Peruvian bird species that are the subject of this proposed rule, as published in our annual notice of review (ANOR) of foreign species on May 21, 2004 (69 FR 29354).

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 ANOR (77 FR 20184, April 23, 2007) identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species. The six Peruvian bird species that are the subject of this proposed rule were designated with an LPN of 2, and we determined that their listing continued to be warranted but precluded because of other listing actions. A listing priority of 2 indicates that the species faces imminent threats of high magnitude. With the exception of the listing priority ranking of 1, which addresses monotypic genera that face imminent threats of high magnitude, LPN categories 2 and 3 are among the Service's highest priorities for listing.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. In that notice, we announced listing to be warranted for 30 foreign bird species, including the six Peruvian bird species that are the subject of this proposed rule, and stated that we would promptly publish proposals to list these 30 taxa. In selecting these six species from the list of warranted-but-precluded species, we took into consideration the magnitude and immediacy of the threats to the species, consistent with the Service's listing priority guidelines.

On September 8, 2008, the Service received a 60-day notice of intent to sue from the Center for Biological Diversity (CBD) and Peter Galvin over violations of section 4 of the Act for the Service's failure to promptly publish listing proposals for the 30 warranted species identified in our 2008 ANOR. Under a settlement agreement approved by the U.S. District Court for the Northern District of California on June 15, 2009, (*CBD et al.* v. *Salazar*, 09–CV–02578–

CRB), we were required to submit to the **Federal Register** proposed listing rules for the ash-breasted tit-tyrant, Junín grebe, Junín rail, Peruvian plantcutter, royal cinclodes, and white-browed tit-spinetail by December 29, 2009. That proposed rule published on January 5, 2010 (75 FR 606).

Summary of Changes From the Proposed Rule

This final rule incorporates changes to our proposed listing based on new information located on these species since the proposed rule was published, including comments and information received from peer reviewers. In order to be concise and efficient, we are incorporating by reference background information that was published on these six species in the proposed rule, 75 FR 606, published January 5, 2010. Species descriptions, taxonomy, and habitat and life history may be found in the proposed rule, unless we are making technical corrections or incorporating new information. In this final rule, we included new information on recent location data for the royal cinclodes. We also updated the population estimates, range, and conservation status on the other species.

We also changed the format of this final rule to make it more readable, particularly in light of the Plain Writing Act of 2010 (Executive Order 13563). We organized it first by species descriptions for all six species, and then by the evaluation of factors affecting the species. We organized the threats evaluation for these six species (also known as the five-factor analysis, see Section 4(a)(1) of the Act), primarily by three habitat types and locations for efficiency. Three species occur in *Polylepis* forest, two species occur at Lake Junín, and the Peruvian plantcutter is evaluated on its own due to its unique habitat requirements and distribution. Because each habitat experiences similar threats, for each threat factor, we identified and evaluated those factors that affect these species within the particular habitat and that are common to all of the species within that habitat. For example, the degradation of habitat and habitat loss are threats to all six species. We also identified and evaluated threats that may be unique to certain species, but that may not apply to all of the species addressed in this final rule. For example, the Peruvian plantcutter is the only species addressed in this rule that is found in the northwestern coast of Peru, and we have addressed threats that are unique to that species specifically. Lastly, we included range maps for each species to better identify their ranges to the public.

Summary of Comments and Recommendations

In the proposed rule that published on January 5, 2010 (75 FR 606), we requested that all interested parties submit information that might contribute to the development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on the proposed listings.

We received three comments on the proposed rule from the public. One comment from the public expressed support for the proposed listings but provided no substantive information. One commenter requested that we take climate change into account when evaluating threats to these species. Although the science of climate change is still uncertain with respect to how it will affect the long-term viability of species and the ecosystems upon which they depend, the Service did consider effects of climate change to these species in this final rule.

The other comment received from the public was also non-substantive—the commenter asked why these species should be listed under the Act if they are not native to the United States. The Act provides for the listing of any species that qualifies as an endangered or threatened species, regardless of its native range. Protections under the Act apply to species not native to the United States and include restrictions on importation into the United States; sale or offer for sale in foreign commerce; and delivery, receipt, carrying, transport, or shipment in foreign commerce and in the course of a commercial activity. Listing also serves to heighten awareness of the importance of conserving these species among foreign governments, conservation organizations, and the public.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with one or more of these six species, the geographic region in which the species occur, and conservation biology principles. We received responses from four peer reviewers. The peer reviewers generally agreed that the description of the biology and habitat for each species was accurate and was based on the best available information. New location data were provided for the royal cinclodes, and we incorporated the information into the rule. Supporting data and information such as the species' biology, ecology, life history, population estimates, threat factors, and current conservation efforts were provided and also incorporated into this rule. In response to a comment from a peer reviewer who thought that the proposed rule was difficult to read, we have tried to reorganize our evaluation and finding in a clearer manner in this final rule.

Species Information

Below is a description of each species. The species are described in alphabetical order, beginning with the ash-breasted tit-tyrant, followed by the Junín grebe, Junín rail, Peruvian plantcutter, royal cinclodes, and the white-browed tit-spinetail.

I. Ash-breasted tit-tyrant *(Anairetes alpinus)*

Species Description

The ash-breasted tit-tyrant, locally known as "torito pechicenizo," is a small New World tyrant flycatcher in the Tyrannidae family that is native to high-altitude woodlands of the Bolivian and Peruvian Andes (BirdLife International (BLI) 2000, p. 392; Collar *et al.* 1992, p. 753; del Hoyo *et al.* 2004, pp. 170, 281; Fjeldså and Krabbe 1990, pp. 468–469; InfoNatura 2007, p. 1; Supreme Decree No. 034–2004–AG 2004, p. 276854). The sexes are similar, with adults approximately 13 centimeters (cm) (5 inches (in)) in length, with dark gray, inconspicuously black-streaked upperparts (BLI 2009o, p. 1; del Hoyo *et al.* 2004, p. 281). The two subspecies (see Taxonomy) are distinguished by their underbelly color, which is yellowish-white in the nominate subspecies and white in the other (BLI 2009o, p. 1). Juvenile plumage is duller in appearance, but is otherwise similar to the adult coloration (del Hoyo *et al.* 2004, p. 281).

Taxonomy

When the species was first taxonomically described by Carriker (1933, pp. 27–29), it was placed in its own genus, *Yanacea*. It was not until the 1960s that *Yanacea* was merged into *Anairetes* (a genus long-known as *Spizitornis)* by Meyer de Schauensee (1966, p. 376). Some contemporary researchers have suggested retaining the species within *Yanacea* (Fjeldså and Krabbe 1990, p. 468). Smith (1971, pp. 269, 275) and Roy *et al.* (1999, p. 74) confirmed that the ash-breasted tit tyrant is a valid species based on its phylogenetic placement and degree of genetic divergence from other species of *Anairetes*, and recent texts continue to place it in *Anairetes* (e.g., del Hoyo *et al.* 2004, p. 281). Therefore, we accept

the species as *Anairetes alpinus*, which follows the Integrated Taxonomic Information System (ITIS 2009, p. 1). Two subspecies are recognized, including, *A. alpinus alpinus* (the nominate subspecies) and *A. alpinus bolivianus*. These subspecies occur in two widely separated areas (see Current Range) (ITIS 2009, p. 1; del Hoyo *et al.* 2004, p. 281) and are distinguished by the color of their underbellies (see Taxonomy) (BLI 2009o, p. 1).

Habitat and Life History

Density of foliage rather than size of tree seems to be an important factor for this species (Fjeldså 2010 pers. comm.). This species forages in the terminal branches and outer foliage, usually in the treetops but also at ground level at the edges of dense forest patches. In areas where all trees have been cut, it forages in the dense regrowth near ground level. In general, these patches are found in a zone of persistent cloudiness, in places with difficult accessibility and few people (Fjeldså 2010 pers. comm.).

In west-central Peru, the species occurs in the Cordilleras (mountains in Spanish) Central and Occidental (in the Peruvian Administrative Regions of Ancash, Huánuco, La Libertad, and Lima) (BLI 2009, p. 1; del Hoyo *et al.* 2004, p. 281). Until 1992, the taxon in this locality was highly localized and known only in Ancash Region (Collar *et al.* 1992, p. 753). The species was subsequently reported in other regions between 2003 and 2007, such as Lima, Huánuco, and Libertad (BLI 2009i, p. 1; BLI 2007, pp. 1, 5; del Hoyo *et al.* 2004, p. 281). There is little remaining *Polylepis* habitat in its elevational zone in the humid east Andean slope of Puno, so there may be a large distribution gap there today (Purcell and Brelsford 2004, p. 155).

The ash-breasted tit-tyrant is restricted to remnant patches of semihumid *Polylepis* or Polylepis–Gynoxys woodlands of Peru and Bolivia (See *http://www.birdlife.org/datazone/speciesfactsheet.php?id=4173* for a range map of the species), where the species is found at elevations between 3,700 and 4,600 meters (m) (12,139 and 15,092 feet (ft)) above sea level. It is found in severely fragmented and local populations in remote valleys in the Andes (Benham *et al.* 2011, p. 145; Association Armonia 2011, p. 1; InfoNatura 2007, p. 1; del Hoyo *et al.* 2004, pp. 170, 281; Collar *et al.* 1992, p. 753; Fjeldså and Krabbe 1990, pp. 468–469). The genus *Polylepis* (locally referred to as "queuña") (Aucca and Ramsay 2005, p. 1), in the Rosaceae family, comprises approximately 20 species of evergreen bushes and trees (Kessler and Schmidt-Lebuhn 2006, pp. 1–2; De la Via 2004, p. 10; Kessler 1998, p. 1), 19 of which occur in Peru (Chutas *et al.* 2008, p. 3). In Bolivia, the ash-breasted tit-tyrant is associated only with *P. pepei* forests, but the bird is found among a greater variety of *Polylepis* species in Peru (Chutas *et al.* 2008, p. 16; I. Gómez, in litt. 2007, p. 1). The average *Polylepis* species are 3–10 m (10–33 ft) tall, but may grow to a height of 36 m (118 ft) (Purcell *et al.* 2004, p. 455). *P. pepei* is considered vulnerable by IUCN and is described as rare. The genus *Gynoxys* includes several species of flowering shrubs. The ash-breasted tit-tyrant is known to exist in disjunct areas: West-central Peru and in suitable habitat stretching from southern Peru into northern Bolivia (Benham *et al.* 2011, pp. 145–157; del Hoyo *et al.* 2004, p. 281).

Polylepis woodlands occur as dense forests, as open-canopied stands with more arid understories, or as shrubland with scattered trees (De la Via 2004, pp. 10–11; Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113; Lloyd and Marsden in press, as cited in Lloyd 2008, p. 532). Ash-breasted tit-tyrants prefer dense *Polylepis* forests (Fjeldså 2002a, p. 114; Smith 1971, p. 269), which often include a mixture of *Gynoxys* trees (no common name), in the Asteraceae family (International Plant Names Index (IPNI) 2009, p. 1; De la Via 2004, pp. 10). Dense *Polylepis* woodlands are characterized by moss- or vine-laden vegetation, with a shaded understory and a rich diversity of insects, making good feeding grounds for insectivorous birds (De la Via 2004, p. 10), such as the ash-breasted tit-tyrant (BLI 2009o, p. 1; Lloyd 2008, p. 535).

There is little information about the ecology and breeding behavior of the ash-breasted tit-tyrant. The species' territory ranges from 1–2 hectares (ha) (2.5–5 acres (ac)) (BLI 2009o, p. 1). The breeding season appears to occur during late dry season (Collar *et al.* 1992, p. 754)—November and December (BLI 2009o, p. 1). Juveniles have been observed in March and July (del Hoyo *et al.* 2004, p. 281; Collar *et al.* 1992, p. 754). Although species-specific information is not available, tit-tyrant nests are generally finely woven, open cups, built in a bush (Fjeldså and Krabbe 1990, p. 468).

The ash-breasted tit-tyrant forages alone, in family groups, and sometimes in mixed-species flocks. The bird takes short flights, either hovering or perching to consume invertebrates near the tops and outer edges of *Polylepis* shrubs and trees (BLI 2009o, p. 1; Lloyd 2008, p. 535; del Hoyo *et al.* 2004, p. 281; Engblom *et al.* 2002, p. 58; Fjeldså and Krabbe 1990, p. 468). In winter, when invertebrate populations diminish, tit-tyrants may also forage on seeds (Fjeldså and Krabbe 1990, p. 468).

Historical Range and Distribution

The ash-breasted tit-tyrant may once have been well-distributed throughout previously dense and contiguous *Polylepis* high-Andes woodlands of Peru and Bolivia. Researchers believe that these woodlands were historically contiguous with lower-elevation cloud forests and widespread above 3,000 m (9,843 ft) (Fjeldså 2002a, pp. 111–112, 115; Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; Collar *et al.* 1992, p. 753). Researchers consider the reduction in *Polylepis* forest habitat to be the result of historical human activities, including burning and grazing, which have prevented regeneration of the woodlands and resulted in the fragmented habitat distribution seen today (Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; Fjeldså and Kessler 1996, Kessler 1995a, Kessler 1995b, and Lægaard 1992, as cited in Fjeldså 2002a, p. 112; Kessler and Herzog 1998, pp. 50–51). Modeling studies by Fjeldså (2002a, p. 116) indicate that this habitat reduction was accompanied by a loss in species richness. It is estimated that only 2–3 and 10 percent of the original forest cover still remain in Peru and Bolivia, respectively (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113). Of this amount, only 1 percent of the remaining *Polylepis* woodlands are found in humid areas, where denser stands occur (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113) and which are preferred by the ash-breasted tit-tyrant (BLI 2009o, p. 1; Lloyd 2008, p. 535; Fjeldså 2002a, p. 114; Smith 1971, p. 269) (see Factor A).

Current Range and Distribution

The current range of the ash-breasted tit-tyrant is estimated to be 11,900 square kilometers (km^2)) (4,595 square miles (mi^2) (BirdLife International [BLI] 2011a, p. 1; see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=4173* for a range map). However, BLI (2000, pp. 22, 27) defines a species' range as the extent of occurrence or the area contained within the shortest continuous imaginary boundary that can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy. Given that the species is known to occur in disjunct locations, this range estimate includes a large area of habitat in which the species is not known to occur, and its actual occupied

habitat is much smaller than its range (Jetz *et al.* 2008, p. 2).

Population Estimates

The species has experienced a population decline of between 10 and 19 percent in the past 10 years, and this rate of decline is predicted to continue (BLI 2009o, pp. 1, 4). The population is considered to be declining in close association with continued habitat loss and degradation (see Factor A) (BLI 2009o, p. 5; BLI 2007, pp. 1, 4). Population information is presented first on a global population estimate, and then at the range country level. The range country estimates will begin with Peru, where the majority of the population resides.

Global population estimate. BLI, a global organization that consults with and assimilates information from bird species experts, categorizes the ash-breasted tit-tyrant as having a population size between 250 and 999 individuals, with an estimated actual population size to be in the mid- to upper-hundreds (BLI 2009o, p. 1; BLI 2007, p. 1). Combining the estimated number of ash-breasted tit-tyrants in Peru and Bolivia, the total population consists of possibly 780 individuals (Benham *et al.* 2011, p. 155; Aucca-Chutas 2007, pp. 4, 8; Gómez *in litt.* 2007, p. 1), consistent with the BLI category of between 250–999 individuals.

Peru. Peruvian population estimates are incomplete, with no estimates for the ash-breasted tit-tyrants in Arequipa, Huánuco, La Libertad, or Lima (BLI 2009g, p. 1; del Hoyo *et al.* 2004, p. 281). Aucca-Chutas (2007, p. 8) surveyed five disjunct *Polylepis* forest patches in Peru and estimated that a total of 461 ash-breasted tit-tyrants were located in these areas. This included 30 birds in Corredor Conchucos (Ancash Region); 181 and 33 birds in Cordilleras Vilcanota and Vilcabamba, respectively (Cusco Region); 22 birds in Cordillera de Carabaya (Puno Region); and 195 birds in a study site called Cordillera del Apurímac (Apurímac Region) (Aucca-Chutas 2007, pp. 4, 8), referring to an area within the Runtacocha highlands. Other research in the Runtacocha highlands has indicated that the ash-breasted tit-tyrant is relatively common there (BLI 2009o, p. 1), with an estimated 100 pairs of birds found in approximately 40 forest patches (Fjeldså *in litt.* 1990, as cited in Collar *et al.* 1992, p. 753). Small numbers of birds are reported in La Libertad Region (del Hoyo *et al.* 2004, p. 281).

Bolivia. Although BLI reports an estimated population size of 150–300 ash-breasted tit-tyrants in Bolivia (Gómez *in litt.*, 2003 and 2007, as cited in BLI 2009o, p. 1), recent surveys indicate that the population is smaller. Over a 6-year period, Gómez (*in litt.* 2007, p. 1) conducted intensive searches throughout 80 percent of the suitable habitat in Bolivia in the Cordillera Real and the Cordillera Apolobamba (La Paz Department), to detect the presence of the ash-breasted tit-tyrant. From this work, researchers inferred or observed the presence of 2–10 individuals in each of four forest patches, and estimated that approximately 180 ash-breasted tit-tyrants occur in Bolivia.

Within La Paz, there may be two separate populations separated by the Mapiri canyon (see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=4173*). The population in the Runtacocha highland in Apurímac, Peru, is morphologically distinct from that in Cusco, although a formal subspecies description has not been published (Fjeldså 2010 pers. comm.). Research on Bolivian localities indicates that gene flow has occurred between some subpopulations, but not all (Gómez 2005, p. 86). In Bolivia, the birds are distributed in 2 metapopulations, with at least 5 subpopulations in one location and 14 subpopulations in the other (Gómez 2005, p. 86). Research in 2011 documented this species traveling distances greater than 30 m (98 ft) between patches (Benham *et al.* 2011, p. 153). A "patch" is considered to be any contiguous area of forest separated from other fragments by 30 m (98 ft) or more (Lloyd 2008, p. 166); and patch sizes are categorized generally as follows: small is less than 4 hectares (ha) (9.9 acres [ac]), medium is between 4 and 12 ha (29.6 ac), and large is greater than 12 ha (Benham *et al.* 2011, p. 148; Lloyd 2008, p. 166). Ash-breasted tit-tyrants occupy territories of 1–2 ha (2.5–5 ac) (BLI 2009o, p. 1).

Because the ash-breasted tit-tyrant may exist as two subspecies (BLI 2009o, p. 5; ITIS 2009, p. 1), it is reasonable to conclude that there may be little or no gene flow between the population that is in Bolivia and the population that is in Peru. However, there is insufficient information at this time to determine the extent of gene flow. All populations of this species essentially face the same threats, are all generally in the same region and habitat type, and all have quite small populations. Absent peer-reviewed information to the contrary and based on the best available information, we recognize all populations of ash-breasted tit-tyrants as a single species. For the purpose of this rule, the ash-breasted tit-tyrant includes all subspecies, if they are later identified as such.

Conservation Status

The ash-breasted tit-tyrant is considered endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276,855). This Decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation. Peru follows the IUCN RedList classification for its species. The IUCN considers the ash-breasted tit-tyrant to be endangered because it has a very small population that is undergoing continued decline in the number of mature individuals, is confined to a habitat that is severely fragmented, and is also undergoing a continuing decline in extent, area, and quality of habitat (BLI 2009o, p. 4; IUCN 2001, pp. 8–12). The ash-breasted tit-tyrant occurs within the following Peruvian protected areas: Parque Nacional Huascarán, in Ancash, and Santuario Histórico Machu Picchu, in Cusco, and Zona Reservada de la Cordillera Huayhuash, spanning Ancash, Huánuco, and Lima (BLI 2009i, p. 1; BLI 2009l, p. 1; BLI 2009n, p. 1; Aucca-Chutas *et al.* 2008, p. 16). In La Paz Department, Bolivia, the species is found in Parque Nacional y Área Natural de Manejo Integrado Madidi, Parque Nacional y Área Natural de Manejo Integrado Cotapata, and the colocated protected areas of Reserva Nacional de Fauna de Apolobamba, Área Natural de Manejo Integrado de Apolobamba, and Reserva de la Biosfera de Apolobamba (BLI 2009i, p. 1; Aucca-Chutas *et al.* 2008, p. 16; Auza and Hennessey 2005, p. 81).

II. Junín Grebe *(Podiceps taczanowskii)*

Species Description

The Junín grebe is a highly social, flight-impaired water bird in the *Podicipedidae* family that is endemic to a single location (Lake Junín) in Peru. It was observed being in the air 5–10 meters (16–33 ft) during the crossing of a mud bank (Fjeldså 2010, pers. comm.). Its underparts are white with a strong silky gloss rather than mottled (Fjeldså 2010, pers. comm.). Common names for the species in English are: Junín flightless grebe, puna grebe, and Taczanowski's grebe. This species is also known by two Spanish names: "zampullín del Junín" or "zambullidor de Junín" (del Hoyo *et al.* 1992, p. 195; Fjeldså 2004, p. 199; Instituto Nacional de Recursos Naturales (INRENA) 1996, p. 3; Ramsen *et al.* 2007, p. 18; Supreme Decree 034–2004–AG 2004, p. 276854).

A slim, long-necked bird, the Junín grebe is about 35 cm (13.78 in) in length, and its weight ranges from 0.30 to 0.47 kilograms (0.66 to 1.04 pounds) (BLI 2009b, p. 1; UNEP–WCMC 2009, p. 1). The Junín grebe has a pointed head, with dark feathers on its back, a white throat, and mottled, dusky-colored underparts. This grebe is distinguished by its slender gray bill, red iris, and dull yellow-orange colored feet. Immature birds are darker gray on the flanks than mature birds (BLI 2009b, p. 1).

Taxonomy

The Junín grebe was taxonomically described by Berlepsch and Stolzmann in 1894 (ITIS 2009, p. 1). It is one of nine species of grebes in the genus *Podiceps* worldwide (Dickinson 2003, p. 80). The species' taxonomic status as *Podiceps taczanowskii* is valid (ITIS 2009, p. 1).

Habitat and Life History

The typical feeding habitat of this species consists of shallow water in Lake Junín with calcareous sediments and extensive carpets of chalk-encrusted algae known as *Chara* (brittlewort or stonewort), which is its principal feeding substrate (O'Donnel and Fjeldså 1997, p. 30). Lake Junín *Chara*, is an aquatic plant genus (Denike and Geiger undated, p. 18). Over the last 20 years, the extent of *Chara* vegetation has decreased in Lake Junín (Tueros *in litt;* in Fjeldså pers. comm. 2010, pp. 2–3.) As a result, the feeding habitat for the grebe has also changed dramatically. The disappearance of *Chara* (specifically *Chara fragilis;* ParksWatch 2006, p. 8) may be linked with zinc pollution. Higher zinc concentration levels are detrimental to green algae (Fjeldså pers. comm. 2010, pp. 2–3). The concentrations of heavy metals are reported to be within legal limits for humans; however, copper and zinc concentrations may be limiting factors for the Chara vegetation. Local reports indicate that vegetation, particularly sedges within the *Schoenoplectus* genus family (this species' nesting habitat), has disappeared completely in recent years, likely due to low water levels and grazing cattle in the marshes and wetlands (Fjeldså pers. comm. 2010).

The Junín grebe is endemic to the open waters and marshlands of Lake Junín, located at 4,080 m (13,390 ft) above sea level in the Peruvian Administrative Region of Junín (BLI 2009b, p. 1). The 147-km² (57-mi²) lake, also known as "Chinchaycocha" or "Lago de Junín," is large but fairly shallow (ParksWatch 2009, p. 1; Tello 2007, p. 1). Situated within "puna" habitat, the climate is seasonal and can be "bitterly cold" in the dry season (Fjeldså 1981, p. 240). Local vegetation is characterized by tall dense grasslands and scrubland with open, rocky areas, all interspersed with wetlands and woodlands (BLI 2003, p. 1; ParksWatch 2009, pp. 1, 4). The dominant terrestrial plant species surrounding the lake includes 43 species of grass *(Poaceae* family), 15 species of asters *(Asteraceae* family), and 10 species of legumes *(Fabaceae* family) (ParksWatch 2009, p. 1). Aquatic vegetation includes Andean water milfoil *(Myriophyllum quitense)*, several species of pondweed (including *Elodea potamogeton*, *Potamogeton ferrugineus*, and *P. filliformis)*, and bladderwort *(Utricularia* spp.). Floating plants, such as duckweed *(Lemna* species (spp.)), large duckweed *(Spiodela* spp.), and water fern *(Azolla filiculoides)*, also occur on the lake (ParksWatch 2009, p. 2). The Lake is surrounded by extensive marshland along the lake shore (BLI 2009a, p. 1; BLI 2009b, p. 1) that extends into the lake up to 1–3 mi (2–5 km) from shore (O'Donnel and Fjeldså 1997, p. 29). The marshes are dominated by two robust species of cattails, giant bulrush *(Schoenoplectus californicus* var. *Totara)* and totorilla *(Juncus articus* var. *Andicola)* (Fjeldså 1981, pp. 244, 246). Both cattail species can reach nearly 2 m (6.6 ft) in height. These plant communities, or "tortoras," grow so densely that stands are often impenetrable (ParksWatch 2009, p. 1). In shallow water, during low lake levels, tortora communities can become partially or completely dry (ParksWatch 2009, p. 2).

Lake Junín supports one of the richest and most diverse arrays of bird species of all Peruvian high Andean wetlands (ParksWatch 2009, p. 3). These bird species include migratory birds, birds that nest at high altitudes, aquatic birds, and local endemic species such as the Junín grebe, the Junín rail *(Laterallus tuerosi;* also the subject of this final rule), the giant coot (*Fulica ardesiaca*), and the Chilean flamingo *(Phoenicopterus chilensis)* (BLI 2009a, pp. 2–3; ParksWatch 2009, p. 3; Tello 2007, p. 2). Mammals are relatively scarce in the area, although there are some predators (ParksWatch 2009, p. 4) (see Factor C).

Breeding season for this species occurs annually from November to March (O'Donnell and Fjeldså 1997, p. 29; Fjeldså 1981, pp. 44, 246). The Junín grebe nests in the protective cover of the marshlands during the breeding season (Tello 2007, p. 3; Fjeldså 1981, p. 247), particularly in stands of giant bulrush (ParksWatch 2009, p. 4). Under natural conditions, winter rains increase the lake water level during the breeding season, allowing the grebes to venture into local bays and canals, although they are never found nesting on the lake's shore (Tello 2007, p. 3). The species nests in the giant bulrush marshlands (ParksWatch 2009, p. 4). Well-hidden floating nests can contain up to three eggs, with an average of two eggs, laid during November and December (Fjeldså 1981, p. 245). The species is believed to have a deferred sexual maturation (Fjeldså 2004, p. 201) and exhibits low breeding potential, perhaps as a reflection to adaptation to a "highly predictable, stable environment" (del Hoyo *et al.* 1992, p. 195), laying one clutch during the breeding season (ParksWatch 2009, p. 4). Junín grebes occasionally produce a replacement clutch if their original nest is disturbed (Fjeldså 2004, pp. 199, 201). After the eggs hatch, the male grebe cares for the chicks, and does not leave the nest to feed. The female grebe is responsible for feeding the male and chicks until the chicks can leave the nest (Tello 2007, p. 3). The Junín grebe is likely a long-lived species (Fjeldså 2004, p. 201), and its breeding success and population size are highly influenced by the climate (BLI 2009b, p. 2; BLI 2008, pp. 1, 3–4; Fjeldså 2004, p. 200; Hirshfeld 2007, p. 107; Elton 2000, p. 3) (see Factor A).

The Junín grebe feeds in the open waters of the lake and around the marsh edges, moving into the open waters of the lake to feed where it is easier to dive for food during the winter (Tello 2007, p. 3; Fjeldså 1981, pp. 247–248). Fish (primarily pupfish *(Orestias* spp.)) account for over 90 percent of the grebe's diet (Fjeldså 1981, pp. 251–252). Pupfish become scarce when the marshlands dry during periods of reduced water levels, and the Junín grebe is then known to vary its diet with midges (Order *Diptera)*, corixid bugs *(Trichocorixa reticulata)*, amphipods *(Hyalella simplex)*, and shore fly maggots and pupa *(Ephydriid* spp.).

Historical Range and Distribution

The Junín grebe was historically known to be endemic to Lake Junín, in the Peruvian Administrative Region of Junín (Fjeldså 2004, p. 200; Fjeldså and Krabbe 1990, p. 70; INRENA 1996, p. 1; Fjeldså 1981, p. 238). Experts believe that the species was previously distributed throughout the entire 57-mi² (147-km²) lake (BLI 2009a, p. 1; BLI 2003, p. 1; Fjeldså 1981, p. 254; Gill and Storer in Fjeldså 2004, p. 200). In 1938, the Junín grebe was encountered throughout the entire lake (Morrison 1939, p. 645). The Junín grebe is now

absent from the northwestern portion of Lake Junín due to mine waste contamination (Gill and Storer, pers. comm. As cited in Fjeldså 2004, p. 200; Fjeldså 1981, p. 254).

Current Range and Distribution

The Junín grebe is endemic to Lake Junín, located at 4,080 m (13,390 ft) above sea level in the Peruvian high Andes (see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=3644* for a range map of the species; BLI 2009a, p. 1; BLI 2009b, p. 1). Although BLI (2009b, p. 1) reports the current estimated range of the species as 143 km² (55 mi²), BLI's definition of a species' range is the total area within its extent of occurrence, noting that Lake Junín is only a 147-km² (57-mi²) lake (BLI 2009a, p. 1) and that the Junín grebe is restricted to the southern portion of the lake (Gill and Storer, pers. comm. As cited in Fjeldså 2004, p. 200; Fjeldså 1981a, p. 254), its current range is actually smaller than the figure reported by BLI. The entire population of this species is located only within a protected area, the Junín National Reserve (BLI 2009a, p. 1; BLI 2009b, p. 1; ParksWatch 2009, p. 4).

Population Estimate

The current population of the Junín grebe is estimated to be 100–300 individuals (BLI 2009b, p. 3), having undergone a severe population decline in the latter half of the 20th century, with extreme population fluctuations during this time (Fjeldså 1981, p. 254). Field studies in 1938 indicated that the Junín grebe was extremely abundant throughout Lake Junín (Morrison 1939, p. 645). Between 1961 and 1979, the population fell from more than 1,000 individuals to an estimated 250–300 birds (BLI 2009b, p. 2; Collar *et al.* 1992, p. 43; Harris 1981, as cited in O'Donnell and Fjeldså 1997, p. 30; Fjeldså 1981, p. 254). Surveys during the mid-1980s estimated a total of 250 individuals inhabiting the southern portion of Lake Junín (BLI 2009b, p. 2; Collar *et al.* 1992, p. 43). In 1992, only 100 birds were observed, and by 1993, the population had declined to 50 birds, of which fewer than half were breeding adults (BLI 2008, p. 3; BLI 2009b, p. 2). In 1995, an estimated 205 Junín grebes were present on Lake Junín (O'Donnell and Fjeldså 1997, p. 30). Breeding and fledging were apparently unsuccessful from 1995 to 1997. However, there were two successful broods fledged during the 1997 and 1998 breeding seasons (BLI 2008, p. 3; Valqui *in litt.*, as cited in BLI 2009b, p. 2). In 1998, more than 250 Junín grebes were counted in a 4-km² (1.5-mi²) area in the southern portion of Lake Junín, suggesting a total population of 350 to 400 birds (Valqui *in litt.*, as cited in BLI 2009b, p. 2). In 2001, field surveys indicated that there may have been a total population of 300 birds, but that estimate has been considered optimistic (Fjeldså *in litt.* 2003, as cited in BLI 2009b, p. 2). Fjeldså (*in litt.* 2003, as cited in BLI 2009b, p. 2) postulated that perhaps only half that number would have been mature individuals.

The species has experienced a population decline of 14 percent in the past 10 years, and the population is expected to continue to decline (BLI 2009b, pp. 1, 6–7). The species' decline is associated with continued habitat loss and degradation (Gill and Storer, pers. comm. as cited in Fjeldså 2004, p. 200; Fjeldså 1981, p. 254). These population fluctuations are strongly linked to precipitation (see Factor A).

Conservation Status

The Junín grebe is considered critically endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, pp. 276, 853). The IUCN categorizes the Junín grebe as critically endangered because it is endemic to one location and has undergone significant population declines, such that an extremely small number of adults remain (BLI 2009b, pp. 1, 3). The single known population of the Junín grebe occurs wholly within one protected area in Peru, the Junín National Reserve (BLI 2009b, pp. 1–2).

III. Junín rail *(Laterallus tuerosi)*

Species Description

The Junín rail is a secretive bird of the *Rallidae* family that is endemic to a single lake (Lake Junín) in Peru. The species is also referred to as the Junín black rail (Fjeldså 1983, p. 281) and is locally known as "gallinetita de Junín" (Supreme Decree 034–2004–AG 2004, p. 27684). This rail measures 12–13 cm (4.7–5.1 in) in length, and has a dark slate-colored head, throat, and underparts. Its belly and vent (anal aperture) are black. The characteristic feature of this rail is the heavily barred (black and white) entire upperparts of the body, including its wings and flanks (Fjeldså 2010 pers comm.). The under-tail coverts (feathers on the underside of the base of the tail) are buff in color, with a dull rufous-brown back. The remaining underparts are dark brown and boldly barred in white, and the legs are greenish-yellow (BLI 2009b, p. 1).

Taxonomy

This species was discovered by Fjeldså in 1977 and described in 1983 (BLI 2011; Fjeldså 2010 pers. comm.). BirdLife International considers this rail a full species based on morphological features (BLI 2009b; p. 1). The closely related black rail, *Laterallus jamaicensis* occurs at much lower elevations (i.e., 0 to 1,350 m (0 to 4,429 ft) above sea level) (BLI 2007, p. 1; BLI 2000, p. 170; Collar *et al.* 1992, p. 190). Based on the morphological differences and the species' distinct and disjunct ranges, we consider the Junín rail to be a discrete species and recognize it as *L. tuerosi.*

It should be noted that it appears that only 2 specimens of the Junín rail have ever been collected (near Ondores) (Fjeldså 1983, pp. 278–279) and that all expert accounts of this species rely solely on that collection and a subsequent observation of the species in Pari (Fjeldså in litt., 1992, as cited in Collar *et al.* 1992, p. 190).

Habitat and Life History

The Junín rail occurs in the dense, interior marshlands of Lake Junín where rushes *(Juncus* spp.) predominate or in more open mosaics of rushes, mosses (division Bryophyta), and low herbs (Fjeldså 1983, p. 281). Lake Junín is located in the seasonally climatic "puna" habitat, with a variety of species of grasses, asters, and trees of the bean family forming tall, dense grasslands and open scrubland, interspersed with wetlands and woodlands (ParksWatch 2009, pp. 1, 4; ParksWatch 2006, p. 2). Giant bulrushes and totorilla dominate the extensive marshlands surrounding the lake (BLI 2009b, p. 1; ParksWatch 2009, p. 1; Fjeldså 1983, p. 281). In shallow water, during low lake levels, "tortora" communities can become partially or completely dry (ParksWatch 2009, p. 2). The lake supports a wide variety of bird species and aquatic vegetation (BLI 2009a, pp. 2–3; ParksWatch 2009, p. 3; Tello 2007, p. 2; BLI 2003, p. 1).

There is little information regarding the ecology of the Junín rail. The species appears to be completely dependent on the wide marshlands located around the southeastern shoreline of the lake for nesting, foraging, and year-round residence (BLI 2009b, p. 2; Collar *et al.* 1992, p. 190; Fjeldså 1983, p. 281) (see also Current Range and Distribution). Information received during the comment period on the proposed rule indicates that the species inhabits mosaic vegetation with dense *Juncus* (rush) beds (often areas where the vegetation is broken down) and open waterlogged areas with short but

densely matted vegetation of mosses and *Lilaeopsis* (grassworts) rather than the drier bunchgrass hills (puna habitat). The habitat provides a complex mosaic of niches that leads to the patchy distribution of many bird species throughout the region, indicating that this species has specialized habitat requirements that are only satisfied locally (Fjeldså and Krabbe 1990, p. 32). The species' distribution is highly localized around the lake. The Junín rail apparently prefers the dense, interior marshlands comprised primarily of rushes and mosaics of rushes, mosses (division Bryophyta), and low herbs in more open marsh areas (Fjeldså 1983, p. 281). High habitat specificity is consistent with related rail species. The water depth, emergent vegetation used for cover, and access to upland vegetation are all important factors in the rail's habitat use (Flores and Eddleman 1995, p. 362). Similar to all rails, the Junín rail is furtive and remains well-hidden in the marshes surrounding the lake (BLI 2009b, p. 2). The Junín rail reportedly nests at the end of the dry season, in September and October. Nests are built on the ground within dense vegetative cover, and the species' clutch size is two eggs (BLI 2009b, p. 2; Collar *et al.* 1992, p. 190). The diet of the Junín rail has not been studied specifically, but other black rail species feed primarily on small aquatic and terrestrial invertebrates and seeds (Eddleman *et al.* 1994, p. 1).

Historical Range and Distribution

The Junín rail is endemic to Lake Junín (BLI 2009b, p. 2; Fjeldså 1983, p. 278). The species may have been historically common in the rush-dominated marshlands surrounding the entire lake (Fjeldså 1983, p. 281). In addition to the species' specific habitat preferences (see Current Range and Distribution), it is believed that the Junín rail is now restricted to the marshes at the southwestern corner of the lake due to the high level of water contamination that flows into the northwestern margins of the lake via the San Juan River (Martin and McNee 1999, p. 662).

Current Range and Distribution

The Junín rail is restricted to the southwestern shore of Lake Junín (Lago de Junín), in the Andean highlands of central Peru (see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=2842* for a range map of the species). It is currently known from only two localities (near the towns of Ondores and Pari) (Fjeldså 2010 pers. comm.; BLI 2009b, p. 2; Collar *et al.* 1992, p. 190; Fjeldså 1983, p. 281). However, based on habitat needs, it may occur in other portions of the approximately 150 km² (57.9 mi²) of marshland surrounding the lake, discussed in more detail below.

The range of the species is estimated to be 160 km² (62 mi²) (BLI 2011b, p. 1). However, this is likely an overestimate of the species' actual range for several reasons. First, BLI's definition of a species' range results in an overestimate of the actual range. Second, the species' range was calculated based on the availability of presumed suitable habitat for the Junín rail. It has long been assumed that the rail potentially occupies the entire marshland area surrounding Lake Junín (Fjeldså 1983, p. 281). The two localities mentioned, Ondores and Pari, are villages at the lake shore. Information received during the comment period on the proposed rule indicates that there is continuous rail habitat in the outer part of the marshes outside these villages, 1–2 km (0.6–1.2 mi) outside the firm ground (Fjeldså 2010 pers. comm.). The rail has been documented along this 6–7 km (3.7–4.3 mi) section; the area of suitable habitat here is about 10 km² (3.9 mi²). East and north of the lake, there is similar habitat, approximately 25 km² (9.6 mi²) combined (Fjeldså 2010 pers. comm.). However, the Junín rail's actual range is very likely smaller than the approximated range reported by BLI since 2000 (BLI 2009b, p. 1; BLI 2008, p. 3; BLI 2007, p. 1; BLI 2000, p. 170).

Population Estimates

The species has experienced a population decline of between 10 and 19 percent in the past 10 years (BLI 2009b, p. 2). However, rigorous population estimates have not been conducted (Fjeldså 1983, p. 281), and the species' elusiveness makes it difficult to locate (BLI 2009b, p. 2). The population is considered to be declining in close association with continued habitat loss and degradation (see Factor A) (BLI 2008, p. 1). Local fishermen have reported serious declines in some years, and several individual birds have been found dead (Fjeldså 2010 pers. comm.). In 1983, the Junín rail was characterized as possibly common, based on local fishermens' sightings of groups of up to a dozen birds at a time (Fjeldså 1983, p. 281). The species continues to be reported as fairly common (BLI 2009b, p. 1; BLI 2007, p. 1). BLI estimates that this species' population size falls within the population range category of 1,000–2,499 (BLI 2009b, p. 1; BLI 2007, p. 1; BLI 2000, p. 170). This estimate is an extrapolation that continues to be based on the assumption that the species may be fairly common in the entire circa 150 km² (58 mi²) of available marshland around Lake Junín (BLI 2009b, p. 1; BLI 2007, p. 1). The species has never been confirmed outside its two known localities and, therefore, it is possible that the species is locally common, but not widely distributed. If the Junín rail is not common throughout Lake Junín's marshland, the actual population size may be much lower.

Conservation Status

The Junín rail is considered endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276855). The IUCN categorizes the Junín rail as endangered because it is known only from a small area of marshland around a single lake, where the habitat quality is declining (BLI 2008, p. 3). The single known population of the Junín rail occurs wholly within one protected area in Peru, the Junín National Reserve (BLI 2009b, pp. 1–2; BLI 2008, p. 1).

IV. Peruvian Plantcutter *(Phytotoma raimondii)*

Species Description

The Peruvian plantcutter, locally known as "cortarrama Peruana," is a small finch-like bird endemic to the dry forests of coastal northwest Peru (Schulenberg *et al.* 2007, p. 488; Walther 2004, p. 73; Ridgely and Tudor 1994, p. 733; Collar *et al.* 1992, p. 805; Goodall 1965, p. 636; Sibley and Monroe 1990, p. 371). The Peruvian plantcutter is an herbivore with a predominantly leaf-eating diet (Schulenberg *et al.* 2007, p. 488; Walther 2004, p. 73; Bucher *et al.* 2003, p. 211).

Plantcutters have bright yellow eyes, short wings and rather long tails, and their crown feathers form a slight crest (Ridgely and Tudor 1994, p. 732; Goodall 1965, p. 635). Adult birds are 18.5 to 9 cm (7.28 to 7.48 in) in length and weigh approximately 36 to 44 grams (g) (1.26 to 1.55 ounces (oz)) (Schulenberg *et al.* 2007, p. 488; Walther 2004, p. 73). Males are pale ashy gray, except a broad cinnamon-rufous color band on the belly and above the bill, and white colored bands on their wings (BLI 2009a, p. 1; Goodall 1965, p. 636; Ridgely and Tudor 1994, p. 733). Females are buff-brown with broad, dark brown stripes above, and white with heavy black-striped underparts (BLI 2009a, p. 1; Collar *et al.* 1992, p. 805). Juvenile birds have not been described (Walther 2004, p. 73). The Peruvian plantcutter's bill is stout, short, conical, and finely serrated with

sharp tooth-like projections that run the length of the beak on both sides, and which are well suited for plucking buds, leaves, shoots, and fruits (Schulenberg *et al.* 2007, p. 488; Ridgely and Tudor 1994, p. 732; Goodall 1965, p. 635) (see Habitat and Life History).

Taxonomy

The Peruvian plantcutter was first taxonomically described as *Phytotoma raimondii* by Taczanowski in 1883 (ITIS 2009, p. 1; Sibley and Monroe 1990, p. 371). The type-specimen of the Peruvian plantcutter (the specimen that was described by Taczanowski) was collected by the ornithologist Konstanty Jelski, who recorded the specimen as being collected in the Tumbes Department of Peru (Flanagan *et al.* in litt. 2009, p. 2). However, the reported collection location may have been inaccurate (see Historical range and Distribution, below).

The genus *Phytotoma* contains three species of plantcutters, all endemic to South America (Walther 2004, p. 73; Dickinson 2003, p. 346; Sibley and Monroe 1990, p. 371; Goodall 1965, p. 635). Ornithologists have long debated to which family this genus belongs. Some ornithologists have recommended that the genus be placed in its own family, Phytotomidae (Lanyon and Lanyon 1989, p. 422), while others placed the genus within the Tyrannidae family (Sibley and Monroe 1990, p. 371). Molecular research using DNA sequencing supports the inclusion of *Phytotoma* in the Cotingidae family (Ohlson *et al.* 2006, p. 10; *et al.* 2002, p. 993; Irestedt *et al.* 2001, p. 23; Johansson). Therefore, based on the information currently available to us, we accept that the Peruvian plantcutter belongs to the Cotingidae family, which follows the Integrated Taxonomic Information System (ITIS 2009, p. 1).

Habitat and Life History

The Peruvian plantcutter is reportedly selective in its habitat preference and requires a variety of arid tree and shrub species with dense low-hanging branches close to the ground (Flanagan *et al.* in litt. 2009, p. 7; Williams 2005, p. 2; Flanagan and More 2003, p. 5; Collar *et al.* 1992, p. 805). The primary habitat for the Peruvian plantcutter is seasonally dry tropical forest, which is also referred to as equatorial dry tropical forest, and occurs in the semiarid lowlands of northwestern Peru (Schulenberg *et al.* 2007, p. 21; Linares-Palomino 2006, pp. 260, 263–266; Walther 2004, p. 73). The Peruvian plantcutter also uses arid lowland scrub (dense and open) and dense riparian shrub communities (BLI 2009a. p. 2; Schulenberg *et al.* 2007, pp. 21, 488; Walther 2004, p. 73; Stotz *et al.* 1996, p. 19; Collar *et al.* 1992, p. 805). The Peruvian plantcutter is a key indicator species for Equatorial Pacific Coast arid lowland scrub (Stotz *et al.* (1996, pp. 19, 428). The lowland dry tropical forest and scrub are characterized as small and heavily fragmented patches of plant species adapted to the arid conditions of the prolonged dry season of northwestern Peru (Bridgewater *et al.* 2003, pp. 132, 140; Best and Kessler 1995, p. 40; Ridgely and Tudor 1994, p. 734).

The lowland dry forest in northwestern Peru is open-canopied, with trees occurring in scattered clumps or individually (Flanagan and More 2003, p. 4). The dominant tree species of the lowland dry forest is *Prosopis pallida* (common name "kiawe;" also locally referred to as "algarrobo") in the Fabaceae family (legume family) (Lopez *et al.* 2005, p. 542; More 2002, p. 39). *Prosopis pallida* is a wide-spreading tree or large shrub, 8–20 m (26–65 ft) tall, with dense branches; spines can be present or absent (Pasiecznik *et al.* 2001, p. 36). This deep-rooted drought-tolerant species, related to mesquite species of the southwestern United States and Mexico, provides an important ecological function by improving and stabilizing soil conditions (Pasiecznik *et al.* 2001, pp. 101–102; Brewbaker 1987, p. 1). Typical of legumes, *P. pallida* is able to "fix" atmospheric nitrogen for plant utilization and growth (Pasiecznik *et al.* 2001, p. 3; Brewbaker 1987, p. 1).

Three of the most common tree species associated with *P. pallida* dry forest habitat used by the Peruvian plantcutter are *Capparis scabrida* (locally known as "sapote"), in the Capparaceae (caper) family, and *Acacia macracantha* (long-spine acacia, locally known as "faique") and *Parkinsonia aculeata* (Jerusalem thorn, locally known as "palo verde"), both in the Fabaceae family (More 2002, pp. 17–23). Associated flowering shrubs in dry forest habitat include *Capparis avicennifolia* (locally known as "bichayo") and *C. crotonoides* (locally known as "guayabito de gentil"), both in the Capparaceae (caper) family; *Cordia lutea* (locally known as "overall") in the Boraginaceae (borage) family; and *Maytenus octogona* (locally known as "realengo") in the Celastraceae (bittersweet) family. Other commonly occurring dry forest vegetation includes vines (e.g., Convolvulaceae (morning-glory) and Cucurbitaceae (gourd) families), *Psittacanthus chanduyensis* (tropical mistletoe; locally known as "suelda con suelda") in the Loranthaceae (mistletoe) family, scattered herbaceous species (e.g., Asteraceae (sunflower), Scrophulariaceae (figwort), and Solanaceae (nightshade) families), and grasses (e.g., Poaceae (grass) family) (Elton 2004, p. 2; Walther 2004, p. 73; More 2002, pp. 14–17; Ferreyera 1983, pp. 248–250). Riparian vegetation includes dense shrub and small trees of *P. pallida*, *A. macracantha*, *Capparis* spp., and *Salix* spp. (willow spp.) (Lanyon 1975, p. 443).

The arid climate of northwestern Peru is due to the influence of the cold Humboldt Current that flows north, parallel to the Peruvian Coast (UNEP 2006, p. 16; Linares-Palomino 2006, p. 260; Rodriguez *et al.* 2005, p. 2). The Humboldt Current has a cooling influence on the climate of coastal Peru, as the marine air is cooled by the cold current and, thus, is not conducive to generating rain. To the east, the Andean Mountains prevent humid air from the Amazon from reaching the western lowlands (Linares-Palomino 2006, p. 260; Lanyon 1975, p. 443).

Coastal northwestern Peru experiences a short rainy season during the summer months (January–April) (Linares-Palomino 2006, p. 260), which can also include precipitation in the form of mist or fine drizzle along the coast (Lanyon 1975, p. 443). The mean annual precipitation across the range of the Peruvian plantcutter is 5.0 to 99 mm (0.196 to 3.80 in) (hyper-arid to arid) (Galan de Mera *et al.* 1997, p. 351). The climate is warm and dry with the annual temperature range of 23 to 25 °C (74 to 77 °F) at elevations below 600 m (1,968 ft) (Linares-Palomino 2006, p. 260). Northwestern Peru is strongly influenced by the El Niño Southern Oscillation (ENSO) cycle (Rodriguez *et al.* 2005, p. 1), which can have particularly profound and long-lasting effects on arid terrestrial ecosystems (Mooers *et al.* 2007, p. 2; Holmgren *et al.* 2006a, p. 87) (see Factor A).

Knowledge of the breeding of most species within the Cotingidae family, including the Peruvian plantcutter, is not well known (Walther 2004, p. 73). The Peruvian plantcutter is considered a resident species in Peru, which indicates that it breeds there (Snow 2004, p. 61; Walther 2004, p. 73). Nesting activity of plantcutters appears to occur from March to April (Walther 2004, p. 73; Collar *et al.* 1992, p. 805). Plantcutters build shallow, cup-shaped nests that are made of thin dry twigs and lined with root fibers and other softer material (Snow 2004, p. 55). Nests can be built 1 to 3 m (3.3 to 9.8 ft) above the ground inside a thick thorny shrub

or higher in the fork of a tree (Elton 2004, p. 2; Snow 2004, p. 55; Flanagan and More 2003, p. 3). Females lay two to four eggs, and the incubation period lasts about 2 weeks (Snow 2004, p. 56; Walther 2004, p. 73; Goodall 1965, p. 636). Males assist in rearing the chicks, which fledge after 17 days or so (Snow 2004, p. 56).

Plantcutters are herbivores with a predominantly leaf-eating diet (Snow 2004, p. 46; Bucher *et al.* 2003, p. 211). As an herbivore, the Peruvian plantcutter is dependent on year-round availability of high-quality food, particularly during the dry season when plant growth is very limited (Bucher *et al.* 2003, p. 216). Peruvian plantcutters eat buds, leaves, and shoots of *P. pallida* and various other trees and shrubs, as well as some fruits (e.g., mistletoe) (Schulenberg *et al.* 2007, p. 488; Walther 2004, p. 73; Goodall 1965, p. 635). The seeds, green seed pods, leaves, and flowers of *P. pallida* provide a protein-rich food source for animals (Lewis *et al.* 2006, p. 282). The Peruvian plantcutter appears to prefer to feed while perched in shrubs and trees, although individuals also have been observed foraging on the ground (Snow 2004, p. 50). Birds have been observed in pairs and small groups (Schulenberg *et al.* 2007, p. 488; Walther 2004, p. 73; Flanagan and More 2003, p. 3; Collar *et al.* 1992, p. 804).

Historical Range and Distribution

The Peruvian plantcutter is a restricted-range species that is confined to the mostly flat, narrow desert zone, which is less than 50 km (31 mi) in width (Lanyon 1975, p. 443) and runs along the coast of northwestern Peru (Ridgely and Tudor 1994, p. 734; Stattersfield *et al.* 1998, p. 213; Walther 2004, p. 73). The historical range of the Peruvian plantcutter reportedly extended from the town of Tumbes, located in the extreme northwestern corner of Peru and approximately south to north of Lima within the Regions of Tumbes, Piura, Lambayeque, La Libertad, Ancash, and Lima (Collar *et al.* 1992, pp. 804–805).

The historical distribution of the Peruvian plantcutter was most likely throughout the contiguous lowland *P. pallida* dry forest and riparian vegetation, below 550 m (1,804 ft) (Williams 2005, p. 1; Collar *et al.* 1992). According to Collar *et al.* (1992, pp. 804–805), the Peruvian plantcutter is known from 14 historical sites.

The type-specimen of the Peruvian plantcutter was most likely collected south of the town of Tumbes (Flanagan *et al.* in litt. 2009, pp. 2, 15). It is unknown whether the type specimen was lost or destroyed, or if it was ever returned to Peru (Flanagan *et al.* in litt. 2009, p. 2). Today, there is good indication that the type-specimen was mislabeled as being collected in Tumbes (Flanagan *et al.* in litt. 2009, p. 2). Although the Tumbes Region has been extensively surveyed for the Peruvian plantcutter, including the North-West Biosphere Reserve, there have never been other collections in or near the vicinity of Tumbes or other evidence to suggest that the Peruvian plantcutter ever occurred in the area (Flanagan *et al.* in litt. 2009, p. 2). Thus, it appears that the Peruvian plantcutter never occurred in the Tumbes Region.

Researchers consider the reduction in dry forest habitat to be the result of historical human activities, including extensive land clearing for agriculture, timber and firewood extraction, charcoal production, and overgrazing. These activities have led to the reduction and severe fragmentation of dry forest habitat today (Flanagan *et al.* in litt. 2009, pp. 1–9; Schulenberg *et al.* 2007, p. 488; Lopez *et al.* 2006, p. 898; Bridgewater *et al.* 2003, p. 132; Pasiecznik *et al.* 2001, pp. 10, 75, 78, 95; Stotz *et al.* 1998, p. 52; Lanyon 1975, p. 443; Ridgely and Tudor 1994, p. 734) (see Factor A).

Current Range and Distribution

The current range of the Peruvian plantcutter is approximately 4,900 km² (1,892 mi²) (BLI 2009a, p. 1), at an elevation of between 10 and 550 m (33 and 1,804 ft) above sea level. It occurs within the Peruvian regions of Piura, Lambayeque, Cajamarca, La Libertad, and Ancash (from north to south) (Flanagan *et al. in litt.* 2009, pp. 14–15). This species occurs within two protected areas in Peru (see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=4474* for a range map of the species). It has been documented in the *Prosopis pallida* (a legume known as huarango, bayahonda, or carob) dry forest within the protected archeological sites of the Pómac Forest Historical Sanctuary (BLI 2009e, p. 1) and Murales Forest (Walther 2004, p. 73). The species' reported range is likely an overestimate (Jetz *et al.* 2008, p. 2). BLI defines a species' range as the total area within its extent of occurrence; however, the Peruvian plantcutter's current distribution is severely fragmented and distributed among small, widely separated remnant patches of *P. pallida* dominated dry forest (Flanagan *et al.* 2009, pp. 1–9; BLI 2009a, pp. 2–3; Ridgely and Tudor 1994, p. 18), which are usually heavily disturbed fragments of forest (Bridgewater *et al.* 2003, p. 132). Therefore, the species' actual range is likely smaller than this figure.

The Peruvian plantcutter is extirpated from 11 of its 14 historical sites due to loss of habitat or degradation of habitat (Elton 2004, p. 1; Hinze 2004, p. 1; Flanagan and More 2003, p. 5). Depending on habitat quality, it is estimated that the Peruvian plantcutter requires approximately 1 ha (2.5 ac) of habitat for suitable food and nesting sites (Flanagan *et al. in litt.* 2009, p. 7; Flanagan and More 2003, p. 3). Although the Peruvian plantcutter has been found in patches of *P. pallida* dry forest habitat that are near agricultural lands, tracks or roads, and human settlement (Flanagan *et al. in litt.* 2009, pp. 2–7), much of the available *P. pallida* dry forest habitat is not occupied by the Peruvian plantcutter (Schulenberg *et al.* 2007, p. 488; Snow 2004, p. 69; Walther 2004, p. 73; BLI 2000, p. 401).

Flanagan *et al.* (*in litt.* 2009, pp. 1–15) recently completed a comprehensive review of 53 locations where there have been documented sightings of the Peruvian plantcutter. Of these, the species was determined to be extant (still living) in 29 sites. In the Piura Region, 17 of the 22 documented sites of the Peruvian plantcutter were extant as of a 2009 report (Flanagan *et al. in litt.* 2009, pp. 2–4, 14). In this particular region, the Talara Province contained the largest concentration of intact *P. pallida* dry forest habitat in northwestern Peru and the largest subpopulation of the Peruvian plantcutter (Flanagan *et al. in litt.* 2009, p. 3; BLI 2009a, p. 2; Walther 2004, p. 73; Flanagan and More 2003, p. 5). Additionally, there are several other documented sites of the Peruvian plantcutter in the Piura Region (e.g., Manglares de San Pedro, Illescas Peninsula, and Cerro Illescas) (Flanagan *et al. in litt.* 2009, pp. 4, 14; BLI 2009c, p. 1).

In the Lambayeque Region, Flanagan *et al.* (*in litt.* 2009, pp. 4–5, 14) reported a total of 13 locations of the Peruvian plantcutter, of which 5 are considered extant. Within the Region, there are four important areas for the Peruvian plantcutter:

(1) The Pómac Forest Historical Sanctuary (Santuario Histórico de Bosque de Pómac), designated as a protected archeological site in 2001, comprises 5,887 ha (14,547 ac) of *P. pallida* dry forest (Flanagan *et al. in litt.* 2009, p. 4; BLI 2009e, p. 1). The Sanctuary includes the archeological site Batan Grande, an area comprised of 500 ha (1,235 ac) of *P. pallida* dry forest (Flanagan *et al. in litt.* 2009, p. 4; BLI 2009e, p. 1).

(2) Near the small town of Rafan are remnant patches of *P. pallida* dry forest,

encompassing approximately 1,500 ha (3,706 ac) (BLI 2009f, p. 1). The Rafan area has become a popular birding site for the Peruvian plantcutter (BLI 2009f, p. 1; Engblom 1998, p. 1).

(3) Murales Forest (Bosque de Murales), comprised of *P. pallida* dry forest, is a designated archeological reserved zone (BLI 2009a, p. 3; Stattersfield *et al.* 2000, p. 402).

(4) Chaparri Ecological Reserve, comprised of 34,412 ha (85,033 ac) with *P. pallida* dry forest, is a community-owned and managed protected area (Walther 2004, p. 73).

The remaining sites in the Lambayeque Region are small remnant patches of *P. pallida* dry forest and comprise a few acres (Flanagan *et al. in litt.* 2009, pp. 4–5; Walther 2004, p. 73). The protected areas are further discussed under Factors A and D.

In the Cajamarca Region, Flanagan *et al.* (*in litt.* 2009, pp. 5, 14) reported one occupied site of the Peruvian plantcutter, consisting of approximately 6 ha (14.8 ac) of remnant *P. pallida* dry forest in the Río Chicama Valley. Six of the 12 known sites of the Peruvian plantcutter in the La Libertad Region are considered extant (Flanagan *et al. in litt.* 2009, pp. 5–6, 14). Each of these sites consists of small patches of remnant *P. pallida* dry forest habitat (Flanagan *et al. in litt.* 2009, pp. 5–6; Walther 2004, p. 73). Of the three known sites of the Peruvian plantcutter in the Ancash Region, only one was reported to be extant as of 2009 (Flanagan *et al. in litt.* 2009, pp. 6, 14). Additionally, in the Lima Region, the authors reported that the two historical sites were also unoccupied in the most recent survey (Flanagan *et al. in litt.* 2009, pp. 7, 15).

This species was found recently in central coastal Peru, in the area of Huarmey, Áncash (Rosina y Mónica 2010, p. 257). Additional surveys are needed to determine if other available *P. pallida* dry forest habitat is occupied by the Peruvian plantcutter (Flanagan *et al. in litt.* 2009, p. 7).

Population Estimates

There have been no rigorous quantitative assessments of the Peruvian plantcutter's population size (Williams 2005, p. 1). The estimated extant population size is between 500 and 1,000 individuals and comprises 2 disjunct subpopulations (BLI 2009g, pp. 1–2; Walther 2004, p. 73) and several smaller sites (Flanagan *et al. in litt.* 2009, pp. 2–7; Williams 2005, p. 1; Walther 2004, p. 73; Flanagan and More 2003, pp. 5–9).

The northern subpopulation, located in the Talara Province in Piura Region, reportedly has between 400 and 600 individuals, or approximately 60 to 80 percent of the total population of the Peruvian plantcutter (BLI 2009a, p. 2; Williams 2005, p. 1; Snow 2004, p. 69; Walther 2004, p. 73). The second subpopulation, located at Pómac Forest Historical Sanctuary (Lambayeque Region), reportedly has 20 to 60 individuals (BLI 2009a, p. 2; BLI 2009e, p. 1; Walther 2004, p. 73). The smaller sites are estimated to consist of a few individuals up to 40 individuals (Flanagan *et al. in litt.* 2009, pp. 2–7; Walther 2004, p. 73; Williams 2005, p. 1; Flanagan and More 2003, pp. 5–9).

The population estimate for the Peruvian plantcutter—that is, the total number of mature individuals—is not the same as the effective population size (i.e., the number of individuals that actually contribute to the next generation). The subpopulation structure and the extent of interbreeding among the occurrences of the Peruvian plantcutter are unknown. Although the two large subpopulations and many of the smaller occurrences of the Peruvian plantcutter are widely separated (BLI 2009a, pp. 2–3; Flanagan *et al. in litt.* 2009, pp. 1–9; Ridgely and Tudor 1994. p. 18), there is insufficient information to determine whether these occurrences function as genetically isolated subpopulations.

The Peruvian plantcutter has experienced a population decline of between 1 and 9 percent in the past 10 years, and this rate of decline is predicted to continue (BLI 2009g, p. 1). The population is considered to be declining in close association with continued habitat loss and degradation of habitat (see Factor A) (BLI 2009a, pp. 1–3; BLI 2009g, pp. 1–3; Snow 2004, p. 69; Ridgely and Tudor 1994, p. 18).

Conservation Status

The Peruvian plantcutter is considered endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276855). The IUCN considers the Peruvian plantcutter to be endangered because of ongoing habitat destruction and degradation of its small and severely fragmented range (BLI 2009a, pp. 2–3; BLI 2009g, pp. 1–2). From 1996 to 2000, the IUCN considered the Peruvian plantcutter to be critically endangered (BLI 2009g, p. 1), following changes to the IUCN listing criteria in 2001. Experts have suggested returning the species to its previous classification of critically endangered, due to the numerous and immediate threats to the species (Flanagan, *in litt.* 2009 p. 1; Snow 2004, p. 69; Walther 2004, p. 74).

V. Royal cinclodes *(Cinclodes aricomae)*

Species Description

The royal cinclodes, also known as "churrete real" and "remolinera real," is a large-billed ovenbird in the Furnaridae family that is native to high-altitude woodlands of the Bolivian and Peruvian Andes (BLI 2009i, pp. 1–2; InfoNatura 2007, p. 1; del Hoyo *et al.* 2003, p. 253; Supreme Decree No. 034–2004–AG 2004, p. 27685; Valqui 2000, p. 104). The adult is nearly 20 cm (8 in) in length, with a darker crown and a buff-colored area above the eyes. Its underparts are mostly gray-brown; it has only limited whitish mottling (this and the more distinctive rufous-brown wingbar are the main differences from the closely related species, the stout-billed *Cinclodes (C. excelsior);* Fjeldså 2010 pers. comm.). The throat is buff-colored, and the remaining underparts are gray-brown to buff-white. The wings are dark with prominent edging that forms a distinctive wing-bar in flight. The large, dark bill is slightly curved at the tip (BLI 2009i, p. 1).

Taxonomy

When the species was first taxonomically described, the royal cinclodes was placed in the genus *Upucerthia* (Carriker 1932, pp. 1–2) and was then transferred to *Geositta* as a subspecies *(Geositta excelsior aricomae)* (Vaurie 1980, p. 14). Later, it was transferred to the genus *Cinclodes,* where it was considered a race or subspecies of the stout-billed *Cinclodes (Cinclodes excelsior)* until recently (BLI 2009i, p. 1; Fjeldså and Krabbe 1990, pp. 337–338; Vaurie 1980, p. 15). The royal cinclodes is now considered a distinct species *(C. aricomae)* based on differences in its habitat, morphology, and genetic distance (Chesser 2004, p. 763; del Hoyo *et al.* 2003, p. 253). Therefore, we accept the species as *Cinclodes aricomae,* which also follows ITIS (2009, p. 1).

Habitat and Life History

In the Cordillera Vilcanota, southern Peru, the royal cinclodes shows distinctive preferences for areas with primary (lesser disturbed) woodland habitat quality in larger remnant woodland patches: Specifically tall, dense *Polylepis* vegetation cover, high density of large *Polylepis* trees, and areas with dense and extensive moss ground cover (Lloyd 2008b. pp. 735–745). Near Lampa, Junín Department, the royal cinclodes has recently been observed in *Gynoxys* dominated woodlands where no *Polylepis* species occur (Lloyd 2010, pers. comm.). These findings suggest that in some areas, the

royal cinclodes may not be dependent on *Polylepis* species, but can occur in other high-elevational woodland habitats with similar habitat structure and habitat quality to *Polylepis* (Lloyd 2010, pers. comm.; Witt and Lane 2009, pp. 90–94).

In the Cordillera Vilcanota, the royal cinclodes has a very narrow estimated niche breadth, and it is largely intolerant of the surrounding disturbed non-woodland puna matrix habitat (Lloyd and Marsden 2008, pp. 2645–2660). Individuals here have been observed foraging on the ground or on boulders, concentrating foraging efforts on moss or bark litter substrates (Lloyd 2008). The royal cinclodes is restricted to elevations between 3,500 and 4,600 m (11,483 and 12,092 ft) (BLI 2009i, p. 2; del Hoyo *et al.* 2003, p. 253; BLI 2000, p. 345; Collar *et al.* 1992, p. 588). The characteristics of *Polylepis* habitat were described above as part of the Habitat and Life History of the ash-breasted tit-tyrant. The royal cinclodes prefers dense woodlands (BLI 2009i, p. 2; del Hoyo *et al.* 2003, p. 253; BLI 2000, p. 345; Collar *et al.* 1992, p. 588), with more closed canopies that provide habitat for more lush moss growth (Engblom *et al.* 2002, p. 57). The moss-laden vegetation and shaded understory harbor a rich diversity of insects, making good feeding grounds for insectivorous birds (De la Via 2004, p. 10) such as the royal cinclodes (del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57). In Bolivia, the royal cinclodes has been observed only in *P. pepei* forests, but it is found amongst a greater variety of *Polylepis* species in Peru (Chutas *et al.* 2008, p. 16; I. Gómez, in litt. 2007, p. 1).

Information on the ecology and breeding behavior of royal cinclodes is limited. The species' feeding territory ranges from 3 to 4 ha (7 to 10 ac) (del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57). Breeding pairs may occupy smaller, 2-ha (2.5-ac) territories (Chutas 2007, p. 7). The royal cinclodes is described as "nervous" and is easily disturbed by humans (Engblom *et al.* 2002, p. 57). The breeding season probably begins in December, but territorialism among pairs can be seen in austral winter (June–August) (del Hoyo *et al.* 2003, p. 253; BLI 2000, p. 345). *Cinclodes* species construct burrows or use natural cavities, crevices, or rodent burrows for nesting (Fjeldså and Krabbe 1990, p. 337; Vaurie 1980, pp. 30, 34). The royal cinclodes' clutch size may be similar to that of the closely related stout-billed *Cinclodes (C. excelsior),* which is two eggs per clutch (Graves and Arango (1988, p. 252).

The royal cinclodes appears to mainly feed on beetle larvae, grubs, and earthworms, which they find by turning and tossing away moss and debris on the forest floor with their powerful bills (Fjeldså 2010 pers. comm.). It has also been observed to consume invertebrates, seeds, and occasionally small vertebrates (frogs) (del Hoyo *et al.* 2003, p. 253). The royal cinclodes forages, solitary or in pairs, by probing through moss and debris on the forest floor (del Hoyo *et al.* 2003, p. 253; Fjeldså 2002b, p. 9; BLI 2000, p. 345; Collar *et al.* 1992, p. 589). Their feeding is done so violently that the forest floor looks as if pigs have been feeding there. Due to its feeding behavior, the moss cover rapidly dries up and dies unless the humidity is very high. This characteristic limits the species to areas where the landscape is persistently covered by clouds and mists, or where the canopy is dense enough to provide permanent shade (Fjeldså 2010 pers. comm.). Because this species can heavily disturb its habitat, it requires large feeding territories (thus, only large forest patches can sustain more than one pair). This ground-feeding strategy may facilitate interbreeding amongst groups located on adjoining mountain peaks when the species likely descends the mountains during periods of snow cover (Engblom *et al.* 2002, p. 57).

Historical Range and Distribution

The royal cinclodes may once have been locally common and distributed across most of central to southern Peru and into the Bolivian highlands, in once-contiguous expanses of *Polylepis* forests above 3,000 m (9,843 ft) (BLI 2009i, p. 1; Fjeldså 2002a, pp. 111–112, 115; Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; BLI 2000, p. 345). *Polylepis* woodlands are now restricted to elevations of 3,500 to 5,000 m (11,483 to 16,404 ft) (Fjeldså 1992, p. 10). As discussed above for the Historical Range and Distribution of the ash-breasted tit-tyrant, researchers consider human activity to be the primary cause for historical habitat decline and resultant decrease in species richness (Fjeldså 2002a, p. 116; Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; Fjeldså and Kessler 1996, Kessler 1995a, b, and Lægaard 1992, as cited in Fjeldså 2002a, p. 112; Kessler and Herzog 1998, pp. 50–51). The royal cinclodes may have been extirpated from its type locality (Aricoma Pass, Puno), and possibly throughout the entire Puno Region, where *Polylepis* forest no longer exists (Collar *et al.* 1992, p. 589; Engblom *et al.* 2002, p. 57) (see Population Estimates). It is estimated that between 2–3 and 10 percent of the original forest cover still remains in Peru and Bolivia, respectively (BLI 2009i, p. 1; Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113) (see Factor A). Of this amount, less than 1 percent of the remaining woodlands occur in humid areas, where *Polylepis* denser stands occur (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113) and which are preferred by the royal cinclodes (del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57). The royal cinclodes was initially discovered in Bolivia in 1876, but was not observed there again until recently (BLI 2009i, p. 2; Hirshfeld 2007, p. 198) (see Current Range and Distribution).

Current Range and Distribution

The royal cinclodes is generally restricted to moist and mossy habitat on steep rocky slopes of semihumid *Polylepis* or *Polylepis-Gynoxys* woodlands, where the species is found at elevations between 3,500 and 4,600 m (11,483 and 12,092 ft) (Benham *et al.* 2011, p. 151; BLI 2009i, p. 2; del Hoyo *et al.* 2003, p. 253; Collar *et al.* 1992, p. 588). The current potential range of the species is approximately 2,700 km^2 (1,042 mi^2) (BLI 2009i, p. 1), which is an overestimate of the actual range, given the fragmented nature of the species' remaining habitat (BLI 20091, p. 1; Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113). The royal cinclodes was rediscovered in Bolivia within the last decade, after more than 100 years of not being observed there (Mobley 2010 *in litt.;* Hirshfeld 2007, p. 198). It occurs in the Andes of southeastern Peru (Cusco, Apurímac, Puno and Junín) and adjacent Bolivia (La Paz) (Gomez 2010, p. 1; see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=9773* for a range map of the species).

Within the last 15 years, royal cinclodes has been observed in Peru's Runtacocha highlands and in the Laguna Anantay Valley (both in Apurímac), Pariahuanca Valley (Junín), and Cordillera Vilcanota (Cusco), and in Bolivia, Department of La Paz: Cordillera Apolobamba and the Cordillera Real (including Ilampu Valley, Sanja Pampa, and Cordillera de La Paz) (Benham *et al.* 2011, p. 151; Hirshfeld 2007, p. 198; del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57; Valqui 2000, p. 104). It was also recently discovered in central Peru, approximately 5 km (3.1 mi) from Lampa, Junín Department, at 3700 m (12,139 ft). This represents a 300 km (186 mi) northward range extension for the species (Witt and Lane 2009, pp. 90–94).

Population Estimate

Population information is presented first by range country and then in terms of a global population estimate. The range country estimates begin with Peru, where the majority of the population resides. The royal cinclodes is believed to be a naturally low-density species (Lloyd 2008, pp. 164–180).

Peru. In the Puno Region of Peru, it is unclear whether a viable population of royal cinclodes remains. The royal cinclodes was first observed in Puno in 1930 (Fjeldså and Krabbe 1990, p. 338) and has continued to be reported there (BLI 2009i, pp. 1–2; BLI 2007, pp. 1–2; del Hoyo 2003, p. 253; Collar *et al.* 1992, p. 588). However, based on habitat availability, InfoNatura (2007, p. 1) predicted that the royal cinclodes does not occur in Puno because suitable habitat no longer exists there. Only two royal cinclodes individuals have been reported in the Puno Region (Cordillera de Carabaya) in recent decades (Aucca-Chutas 2007, pp. 4, 8).

Bolivia. The species' current range is more widespread in Bolivia than previously understood. The royal cinclodes had not been observed in Bolivia for more than a century, when it was rediscovered there in 1997 (BLI 2009i, p. 2; Hirshfeld 2007, p. 198). Recent surveys in La Paz Department found it in at least 13 localities (8 in Cordillera Apolobamba and 5 in Cordillera La Paz) (BLI 2009i, p. 1).

BLI reports an estimated population size of 50–70 royal cinclodes in Bolivia (Gómez *in litt.* 2003, 2008, as cited in BLI 2009i, p. 2). Studies in Bolivia reported in 2007 found a density of 1–8 royal cinclodes in each of 30 forest patches (Gómez *in litt.* 2007, p. 1). Thus, they estimated that the royal cinclodes population in Bolivia is approximately 30 birds. Researchers added that, because the royal cinclodes does not always respond to tape-playbacks, these numbers may underestimate the actual population size (Gómez *in litt.* 2007, p. 1).

Global Population Estimate

In 1990, the global population of the royal cinclodes was estimated to be 100–150 individuals (Fjeldså and Krabbe 1990, p. 338). This number represented only the estimated Peruvian population because the royal cinclodes was thought to exist only in Peru at the time of this estimate (BLI 2009i, p. 2; Hirshfeld 2007, p. 198). In 2007, Aucca-Chutas (2007, p. 8) reported an estimated 189 birds located within four separate *Polylepis* forest patches in Peru, with a combined area of 629 ha (1,554 ac). This estimate included 116 birds and 30 birds in Cordilleras Vilcanota and Vilcabamba, respectively (Cusco); 2 birds in Cordillera de Carabaya (Puno); and 41 birds in Cordillera del Apurímac (Runtacocha highlands in Apurímac) (Aucca-Chutas 2007, pp. 4, 8). Subpopulations at the four locations in the Cordillera Vilcanota may contain as few as 1–4 individuals (BLI 2008, p. 2).

In 2002, Engblom *et al.* (p. 57) estimated a total population size of up to 250 pairs of birds. In 2003, the global population was once again reported to include only a few hundred individuals (del Hoyo *et al.* 2003, p. 253). Based on recent observations in both countries, there are likely approximately 270 birds in Peru and 50–70 in Bolivia, totaling 239–340 individuals (this includes the 2011 observations in Laguna Anantay, Apurímac Department (Benham *et al.* 2011). While the BLI estimate of the population is between 50 and 249 individuals (BLI 2011d), recent research has found new habitat and birds in newly identified locations (Benham *et al.* 2011, pp. 145–157).

Population estimates are incomplete, and the population structure and the extent of interbreeding among the various localities are unknown. The species' territory ranges from 3 to 4 ha (7 to 10 ac), and its habitat is fragmented, dispersed, and sparse (del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57). Fjeldså (2010, pers. comm.) indicated that because of the range disjunction, the species may not be breeding as a single population. In the proposed rule, we indicated that there was no information to indicate the distance that this species is capable of or likely to travel between localities. However, research in 2011 found that this species was making flights greater than 100 m (328 ft) between *Polylepis* patches in Apurímac, and was also observed at forest edges (Benham *et al.* 2011, pp. 152).

Engblom *et al.* (2002, p. 57) noted that gene flow between localities likely occurs when the species descends the mountains to forage in the valleys during periods of snow cover at the higher altitudes such that interbreeding may occur at least among localities with shared valleys. Although the information available suggests that the species does not breed as a single population, we have insufficient information to determine if they are genetically isolated. The species has experienced a population decline of approximately 30 and 49 percent in the past 10 years, and this rate of decline is predicted to continue (BLI 2009i, pp. 1, 5). The population is considered to be declining in close association with continued habitat loss and degradation (BLI 2009i, p. 6).

Conservation Status

The royal cinclodes is considered critically endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276854). The IUCN considers the royal cinclodes to be critically endangered due to its extremely small population, which consists of small subpopulations that are severely fragmented and dependent upon a rapidly deteriorating habitat (BLI 2009i, p. 1; BLI 2007, p. 1). The royal cinclodes occurs within the Peruvian protected area of Santuario Histórico Machu Picchu, in Cusco (BLI 2009h, p. 1; BLI 2009i, p. 6; Aucca-Chutas *et al.* 2008, p. 16). In La Paz Department, Bolivia, the species is found in Parque Nacional y Área Natural de Manejo Integrado Madidi, Parque Nacional y Área Natural de Manejo Integrado Cotapata, and the colocated protected areas of Reserva Nacional de Fauna de Apolobamba, Área Natural de Manejo Integrado de Apolobamba, and Reserva de la Biosfera de Apolobamba (BLI 2009a, p. 1; BLI 2009b, p. 1; Aucca-Chutas et al. 2008, p. 16). At Abra Málaga Thastayoc, Cordillera Vilcanota, Peru, a new visitor's center was completed in the Royal Cinclodes Private Conservation Area in February 2011 (ECOAN 2012).

VI. White-browed tit-spinetail *(Leptasthenura xenothorax)*

Species Description

The white-browed tit-spinetail, or "tijeral cejiblanco," is a small dark ovenbird in the Furnaridaii family that is native to high-altitude woodlands of the Peruvian Andes (del Hoyo *et al.* 2003, pp. 266–267; BLI 2000, p. 347; Fjeldså and Krabbe 1990, p. 348; Parker and O'Neill 1980, p. 169; Chapman 1921, pp. 8–9). The sexes are similar in size (approximately 18 cm (7 in) in length). The most distinct feature of this species is its checkered (black-and-white) throat and dark grey body underparts, which distinguishes it from the rusty-crowned tit-spinetail *(Leptasthenura pileata)* (Fjeldså 2010 pers. comm., p. 4). The species is characterized by its bright rufous crown and prominent white supercilium (eyebrow) (Lloyd 2009, p. 2; del Hoyo *et al.* 2003, p. 267), which gives the species its name. The species is highly vocal, "often singing while acrobatically foraging from the outermost branches of *Polylepis* trees" (Lloyd 2009, p. 2).

Taxonomy

The white-browed tit-spinetail was first described by Chapman in 1921 (del Hoyo *et al.* 2003, p. 267). The species was synonymized with the nominate subspecies of the rusty-crowned tit-spinetail *(Leptasthenura pileata pileata)* by Vaurie (1980, p. 66), but examination of additional specimens in combination with field observations strongly suggests that *L. xenothorax* is a valid species (Collar *et al.* 1992, p. 596; Fjeldså and Krabbe 1990, p. 348; Parker and O'Neill 1980, p. 169). Therefore, we accept the species as *Leptasthenura xenothorax*, which follows the Integrated Taxonomic Information System (ITIS 2009, p. 1).

Habitat and Life History

The white-browed tit-spinetail is restricted to high-elevation, semihumid *Polylepis* and *Polylepis-Gynoxys* woodlands, where the species is found between 3,700 and 4,550 m (12,139 and 14,928 ft) above sea level (Lloyd 2009, pp. 5–6; del Hoyo *et al.* 2003, p. 267; BLI 2000, p. 347; Collar *et al.* 1992, p. 595; Fjeldså and Krabbe 1990, p. 348). Dense stands of *Polylepis* woodlands are characterized by moss-laden vegetation and a shaded understory, and provide for a rich diversity of insects, making these areas good feeding grounds for insectivorous birds (De la Via 2004, p. 10), such as the white-browed tit-spinetail (BLI 2009d, p. 2). The characteristics of *Polylepis* habitat are described above in more detail as part of the Habitat and Life History of the ash-breasted tit-tyrant.

This species appears to prefer primary (lesser disturbed) woodland habitat in larger remnant patches at the lower to mid-elevation range of its known elevational range distribution (Lloyd 2008b, pp. 735–745). It prefers areas of high density of tall, large *Polylepis* trees. These usually correspond with areas containing dense and extensive moss ground cover (Lloyd 2008b, pp. 735–745). This species generally forages on vertical trunks and on thicker, epiphyte-clad branches of *Polylepis* trees covered with moss and lichens, unlike other *Leptasthenura* species, which generally forage on the thin terminal branches of the outer canopy (Fjeldså 2010 pers. comm., p. 4). The species is different from other *Polylepis*-dependent insectivorous bird species, in particular *L. yanacensis*, in that it uses different foraging perch types, substrates, and a different niche position (Lloyd 2010 pers. comm.). The white-browed tit-spinetail has been observed to regularly use woodland patches smaller than 0.1 ha (0.25 ac) for foraging in Cordillera Vilcabamba (Lloyd 2008, p. 531; Engblom *et al.* (2002, pp. 57–58).

It is classified as an "infrequent flyer" across gaps between woodland patches. At one site in the Cordillera Vilcanota, the species was observed avoiding flying across gaps to the most distant small woodland patches if these patches were separated by more than 73 m (239 ft) from larger woodland patches (Benham *et al.* 2011, p. 153; Lloyd and Marsden 2010, *in press).* Based on these observations, Engblom *et al.* (2002, p. 58) suggest that the species is able to persist in very small forest fragments, especially if a number of these patches are in close proximity. The lower elevation of this species' range changes to a mixed *Polylepis-Escallonia* (no common name) woodland, and the white-browed tit-spinetail has been observed there on occasion, such as during a snowstorm (del Hoyo *et al.* 2003, p. 267; Collar *et al.* 1992, p. 595; Fjeldså and Krabbe 1990, p. 348). It may not be entirely as dependent on *Polylepis* forests; rather this species may be more dependent on the density of the forest which creates the moss-lichen-insect environment (Fjeldså 2010 pers. comm.)

There is limited information on the ecology and breeding behavior of the white-browed tit-spinetail. Lloyd (2006, as cited in Lloyd 2009, p. 8) reports that the species breeds in October in Cordillera Vilcanota in southern Peru. In the same area, one adult was seen attending a nesting hole in a *Polylepis* tree in November 1997 (del Hoyo *et al.* 2003, p. 267; Bushell in litt. (1999), as cited in BLI 2009d, p. 2). Only one nest of the white-browed tit-spinetail has ever been described. According to Lloyd (2006, as cited in Lloyd 2009, p. 8), the nest was located within a natural cavity of a *Polylepis racemosa* tree's main trunk, approximately 2 m (7 ft) above the ground. To construct their nest, the white-browed tit-spinetail pair uses moss, lichen, and bark fibers they stripped from *Polylepis* tree trunks, large branches, and large boulders while foraging. The nest was cup-shaped and contained two pale-colored eggs (Lloyd 2006, as cited in Lloyd 2009, p. 8).

The white-browed tit-spinetail is insectivorous, with a diet consisting primarily of arthropods (Lloyd 2009, p. 7; del Hoyo *et al.* 2003, p. 267). The species forages in pairs or small family groups of three to five, and often in mixed-species flocks, gleaning insects from bark crevices, moss, and lichens on twigs, branches, and trunks (BLI 2009d, pp. 2–3; Engblom *et al.* 2002, pp. 57–58; Parker and O'Neill 1980, p. 169). The white-browed tit-spinetail is highly arboreal, typically foraging acrobatically from the outer branches of *Polylepis* trees while hanging upside-down (Lloyd 2008b, as cited in Lloyd 2009, p. 7; del Hoyo *et al.* 2003, p. 267).

Historical Range and Distribution

In our 2008 Annual Notice of Findings on Resubmitted Petitions for Foreign Species (73 FR 44062; July 29, 2008), we stated that, historically, the white-browed tit-spinetail may have occupied the *Polylepis* forests of the high-Andes of Peru and Bolivia. We included both countries in the historical range of the species because the species' primary habitat, the *Polylepis* forest, was historically large and contiguous throughout the high-Andes of both Peru and Bolivia (Fjeldså 2002a, p. 115). However, based on further research, we have determined that historically, the species was known from only two Regions in south-central Peru, Cusco and Apurímac (del Hoyo *et al.* 2003, p. 267; Collar *et al.* 1992, p. 594), and not in Bolivia.

The white-browed tit-spinetail may once have been distributed throughout south-central Peru, in previously contiguous *Polylepis* forests above 3,000 m (9,843 ft) (BLI 2009d, pp. 1–2; Fjeldså 2002a, pp. 111–112, 115; Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; BLI 2000, p. 347). However, *Polylepis* woodlands are now restricted to elevations of 3,500 to 5,000 m (11,483 to 16,404 ft) (Fjeldså 1992, p. 10). As discussed above for the Historical Range and Distribution of the ash-breasted tit-tyrant, researchers consider human activity to be the primary cause for historical habitat decline and resultant decrease in species richness (Fjeldså 2002a, p. 116; Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; Fjeldså and Kessler 1996, Kessler 1995a, b, and Lægaard 1992, as cited in Fjeldså 2002a, p. 112; Kessler and Herzog 1998, pp. 50–51). It is estimated that only 2–3 percent of the original forest cover still remains in Peru (Fjeldså 2002a, pp. 111, 113). Less than 1 percent of the remaining woodlands occur in humid areas, where denser stands are found (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113), and which are preferred by the white-browed tit-spinetail (BLI 2009d, p. 2; Lloyd 2008a, as cited in Lloyd 2009, p. 6).

Current Range and Distribution

The white-browed tit-spinetail occurs in high-elevation, semihumid patches of *Polylepis* and *Polylepis-Gynoxys* woodlands in the Andes Mountains of south-central Peru (see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=4824* for a range map of the species). The species

has a highly restricted and severely fragmented range, and is currently known from only a small number of sites in the Apurímac Department in these areas: The Runtacocha highlands; Nevado Sacsarayoc massif (mountain range); Cordillera Vilcanota and in the Laguna Anantay Valley in Apurímac. It is also known to occur in Vilcabamba in Cusco Department (within the Peruvian protected area of Santuario Histórico Machu Picchu) (Benham *et al.* 2011, p. 153; Fjeldså 2010 pers. comm., p. 4; Lloyd 2010; BLI 2009c, pp. 1, 3; BLI 2009d, p. 6; del Hoyo *et al.* 2003, p. 267). The species occurs at an altitude of 3,700–4,550 m (12,139–14,928 ft) (Lloyd 2009, pp. 1, 5–6; del Hoyo *et al.* 2003, p. 267; Fjeldså and Krabbe 1990, p. 348). It is more commonly encountered in the lower elevations within this range. Subpopulations of white-browed tit-spinetail in the Cordillera Vilcanota have a very narrow estimated niche (Benham *et al.* 2011, p. 153; Fjeldså 2010 pers. comm.; Lloyd 2009, p. 5; Lloyd and Marsden 2008, pp. 2645–2660). The estimated potential range of the species is approximately 2,500 km² (965 mi²) (BLI 2011f, p. 1).

Population Estimates

Peru. An estimated 305 birds were located within 3 disjunct *Polylepis* forest patches in Peru (Aucca-Chutas 2007, p. 8). This included 205 birds and 36 birds in Cordilleras Vilcanota and Vilcabamba, respectively (Cusco), and 64 birds in Cordillera del Apurímac (Runtacocha highlands of Apurímac) (Aucca-Chutas 2007, p. 8). The species may occur at higher densities in other areas of *Polylepis* forests (Lloyd 2008c, as cited in Lloyd 2009, p. 9). Despite the low population estimates of this species, the quantitative data from Cordillera Vilcanota indicates that the white-browed tit-spinetail is one of the most abundant *Polylepis* specialists in southern Peru (Lloyd 2009, p. 9). This species was documented in Laguna Anantay, Apurímac in 2010, and its estimated population size in this location was 229 individuals (Benham *et al.* 2011, p. 153).

Global population estimate: BLI categorizes the white-browed tit-spinetail as having a population size between 500 and 1,500 mature individuals (BLI 2011f, p. 1). However, the estimate is based on Engblom *et al.* 2002 (p. 58). In 2002, Fjeldså (2002b, p. 9) also estimated a total population size of between 250 and 1,000 pairs of birds. More recently it was described as having one of the highest densities of all the threatened *Polylepis* bird species in this area (Benham *et al.* 2011, p. 153; Lloyd 2010, pers. comm.). It is described as being common in a rare and patchy (fragmented) habitat (Lloyd 2008). Some species have always been rare (Donald *et al.* 2010, p. 10); particularly those associated with habitat such as *Polylepis*-dominated forest. However, as of 2009, the species was described as experiencing a population decline between 10 and 19 percent in the past 10 years, and this rate of decline was predicted to continue (BLI 2009d, p. 5). The species' population decline is correlated with the rate of habitat loss and degradation (see Factor A) (BLI 2009d, p. 6). Based on the best available information, we consider the population estimate to be between 500 and 1,500 mature individuals.

Conservation Status

The white-browed tit-spinetail is considered endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276854). The IUCN considers the white-browed tit-spinetail to be endangered due to its very small and severely fragmented range and population, which continue to decline with ongoing habitat loss and a lack of habitat regeneration (BLI 2009d, p. 1). Additional protections that are likely to benefit this species include three new recently approved community-owned, private conservation areas (3,415 ha or 8,438 ac) to protect *Polylepis* forest in the Vilcanota Mountains of southeastern Peru, near Cusco, which will subsequently provide protection for bird species such as the white-browed tit-spinetail (American Bird Conservancy 2011, unpaginated; Salem News 2010, p. 1).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. In considering what factors might constitute threats, we look beyond the exposure of the species to determine whether the species responds to the factor in a way that causes actual impacts to the species, and we look at the magnitude of the effect. If there is exposure to a factor, but no response, or only a beneficial response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the factor is. If the factor is significant and, therefore, a threat, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. In making this final listing determination, we evaluated threats to each of these six species. Our evaluation of this information is discussed below.

There are three habitat types in which these six species exist. All six species occur in Peru; two of them occur in Bolivia. The Peruvian plantcutter occurs in coastal northern Peru, the Junín grebe and Junín rail occur in and around Lake Junín, and three (the white-browed tit-spinetail, royal cinclodes, and ash breasted tit-tyrant) occur in forest habitat dominated by *Polylepis* species. Within each of these three habitats, these three species depend on similar physical and biological features and on the successful functioning of their ecosystems to survive. They also face the same or very similar threats within each habitat type. One peer reviewer thought that the proposed rule was difficult to follow, so we hope that the way we have organized our evaluation and finding in this final rule is more clear.

Although the listing determination for each species is analyzed separately, to avoid redundancy we have organized the specific analysis for each species within the context of the broader scale and threat factor in which it occurs. Since within each habitat, these species face a suite of common or mostly overlapping threats, similar management actions would reduce or eliminate those threats. Effective management of these threat factors often requires implementation of conservation actions at a broader scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native environment. Thus, by taking this broader approach, we hope this final rule is effectively organized.

Summary of Factors

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Ash-breasted tit-tyrant, royal cinclodes, and white-browed tit-spinetail (Polylepis habitat)

1. *Ash-breasted tit-tyrant.* The ash-breasted tit-tyrant is dependent upon high-elevation semihumid *Polylepis* or *Polylepis-Gynoxys* woodlands (del Hoyo *et al.* 2004, pp. 281; Collar *et al.* 1992, p. 753; Fjeldså and Krabbe 1990, pp. 468–469). Researchers believe that this habitat was historically contiguous with lower-elevation cloud forests and widespread above 3,000 m (9,843 ft) (Fjeldså 2002a, pp. 111, 115; Collar *et al.* 1992, p. 753), but *Polylepis* woodlands occur today only between 3,500 and 5,000 m (11,483–16,404 ft) (Fjeldså 1992, p. 10). The species prefers dense woodlands (Fjeldså 2002a, p. 114; Smith 1971, p. 269), where the best foraging habitat exists (De la Via 2004, p. 10).

Within La Paz, there may be two separate populations that are separated by the Mapiri canyon (see *www.birdlife.org/datazone/speciesfactsheet.php?id=4173* for a range map of the species). The population in the Runtacocha highland in Apurímac, Peru, is morphologically distinct from that in Cusco, although a formal subspecies description has not been published (Fjeldså 2010 pers. comm.). Several other areas with similar dense *Polylepis* stands exist further south in Apurímac, east of the Chalhuanca valley (a zone with fairly high precipitation) and could hold other populations. These could act as links or corridors to other suitable habitat such as a small *Polylepis* patch that exists near Nevado Solimana in western Arequipa. However, this patch is isolated and could only accommodate a few pairs of ash-breasted tit-tyrants (Fjeldså 2010 pers. comm.).

Although there is currently no evidence to suggest that populations in Cusco and in La Paz are connected, they may have been connected in the past. In 2007, the ash-breasted tit-tyrant was observed in the Ancash Region, Corredor Conchucos (Aucca-Chutas 2007, pp. 4, 8). Here, a *Polylepis* reforestation project is under way to connect two protected areas where ash-breasted tit-tyrants were known to occur: In Parque Nacional Huascarán and Zona Reservada de la Cordillera Huayhuash (MacLennan 2009, p. 1; Antamina Mine 2006, p. 5).

The second location spans the Peruvian-Bolivian border—in the Peruvian Administrative Regions of Apurímac, Cusco, Puno, and Arequipa (from north to south) and in the Bolivian Department of La Paz. Here it occurs in Cordillera Oriental (Apurímac and Cusco), Cordilleras Vilcanota and Vilcabamba (Cusco), and Cordillera de Carabaya (Puno)—in Peru—and ranges into Bolivia, where it is found in the Cordillera Real and the Cordillera Apolobamba (La Paz) (BLI 2009e, p. 1; Aucca-Chutas 2007, p. 8; del Hoyo *et al.* 2004, p. 281; Collar *et al.* 1992, p. 753; Fjeldså and Krabbe 1990, pp. 468–469). The ash-breasted tit-tyrant was only recently (in 2008) reported in Arequipa Region, Peru (BLI 2009j, p. 1).

The ash-breasted tit-tyrant is highly localized (Collar *et al.* 1992, p. 753) and has been described as very rare, with usually only 1–2 pairs per occupied woodland (Fjeldså and Krabbe 1990, p. 469). It exists at such low densities in some places that it may go undetected (Collar *et al.* 1992, p. 753). The species appears to be unable to persist in forest remnants smaller than 1 ha (2.5 ac) (BLI 2009o, p. 1).

2. *Royal cinclodes.* The royal cinclodes is restricted to high-elevation (3,500–4,600 m or 11,483–12,092 ft), moist, moss-laden areas of semihumid *Polylepis* or *Polylepis-Gynoxys* woodlands (BLI 2009i, p. 2; del Hoyo *et al.* 2003, p. 253; BLI 2000, p. 345; Collar *et al.* 1992, p. 588). *Polylepis* woodlands are dispersed and sparse, with an estimated remaining area of 1,000 km² (386 mi²) in Peru and 5,000 km² (1,931 mi²) in Bolivia (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113). Within the remaining *Polylepis* woodlands, the royal cinclodes' range is approximately 2,700 km² (1,042 mi²) (BLI 2011e, p. 1) (See *http://www.birdlife.org/datazone/speciesfactsheet.php?id=9773* for a range map of the species). Less than 1 percent of the remaining woodlands occur in humid areas, where denser stands occur (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113). The optimal habitat for the royal cinclodes is large areas of dense woodlands in the high Andes, with a closed canopy that supports its preferred foraging habitat of shady, moss-laden vegetation (Lloyd 2008, p. 735; De la Via 2004, p. 10; del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57).

3. *White-browed tit-spinetail.* The species is known from only a small number of sites at four locations: The Runtacocha highlands (in Apurímac Region), and the Nevado Sacsarayoc massif, Cordillera Vilcabamba, and Cordillera Vilcanota (in Cusco Region); however, new *Polylepis* habitat has been located (Benham *et al.* 2011, p. 145). In the Cordillera de Vilcanota (Cusco, Peru), where a large portion of the known white-browed tit-spinetail population occurs (205 birds were recently observed there, of 305 total birds observed in 3 study sites in Peru) (Aucca-Chutas 2007, p. 8), *Polylepis* woodland habitat is highly fragmented and degraded. According to Engblom *et al.* (2002, pp. 57–58), the species has been recorded in patches of woodland as small as 0.25 ha (0.6 ac) in Cordillera Vilcabamba, but the species' persistence in small patches appears to be dependent on the patches being in close proximity to each other.

Polylepis habitat

High-Andean *Polylepis* woodlands are considered by experts to be the most threatened habitat in Peru and Bolivia (Purcell *et al.* 2004, p. 457), throughout the Andean region (BLI 2009a, p. 2), and are one of the most threatened woodland ecosystem types in the world (Renison *et al.* 2005, as cited in Lloyd 2009, p. 10). The IUCN has listed several *Polylepis* species as vulnerable, including two species, *Polylepis incana* and *P. pepei* that occur within the range of these three species (Ramsay and Aucca 2003, pp. 3–4; WCMC 1998a, p. 1; WCMC 1998b, p. 1). Peruvian and Bolivian *Polylepis* woodlands today are highly fragmented. In the late 1990s, Fjeldså and Kessler (1996, as cited in Fjeldså 2002a, p. 113) conducted comprehensive ground surveys and analyzed maps and satellite images of the area. They estimated that the current range of *Polylepis* woodlands had been reduced from historical levels by 97–98 percent in Peru and 90 percent in Bolivia. Contemporary *Polylepis* woodlands are dispersed and sparse, covering an estimated area of 1,000 km² (386 mi²) and 5,000 km² (1,931 mi²) in Peru and Bolivia, respectively (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113). Of the remaining *Polylepis* woodlands, only 1 percent is found in humid areas, where the denser *Polylepis* forests preferred by the ash-breasted tit-tyrant tend to occur (Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113).

Habitat loss, conversion, and degradation throughout these three species' range have been and continue to occur as a result of ongoing human activity, including:

(1) Clear cutting and burning;
(2) Extractive activities;
(3) Human encroachment; and
(4) Climate fluctuations that may exacerbate the effects of habitat fragmentation.

Clearcutting and burning. Clear cutting and burning are among the most destructive activities and are a leading cause for *Polylepis* habitat loss (WCMC 1998a, p. 1; WCMC 1998b, p. 1). Forested areas are cleared for agriculture and to create pasture for cattle, sheep,

and camels (BLI 2009a, p. 2; BLI 2009c, pp. 1–2; BLI 2009d, pp. 1–2; BLI 2009e, pp. 1, 5; BLI 2009h, p. 1; BLI 2009m, p. 1; BLI 2009n, p. 4). Grazing lands situated among remaining forest patches are regularly burned in order to maintain the grassland vegetation (locally known as *chaqueo*). Regular burning prevents regeneration of native forests and is considered the key factor limiting the distribution of *Polylepis* forests (BLI 2009f, p. 1; BLI 2009n, p. 4; Fjeldså 2002b, p. 8; WCMC 1998a, p. 1). In some areas, the burns escape control, causing further habitat destruction (BLI 2009a, p. 2; BLI 2009e, pp. 1, 5). Burning and clear cutting occur throughout the ash-breasted tit-tyrant's range, including Ancash, Apurímac, and Cusco in Peru; and in La Paz, Bolivia (BLI 2009a, p. 2). These activities are also ongoing within protected areas, including Parque Nacional Huascarán, Santuario Histórico Machu Picchu, and Zona Reservada de la Cordillera Huayhuash (BLI 2009l, p. 4; BLI 2009n, p. 2; Barrio 2005, p. 564).

With years of extremely high rainfall followed by years of extremely dry weather, the risk of fire is increased from the accumulated biomass during the wet period that dries and adds to the fuel load in the dry season (Block and Richter 2007, p. 1; Power *et al.* 2007, p. 898). Evidence suggests that the fire cycle in Peru has shortened, particularly in coastal Peru and west of the Andes (Power *et al.* 2007, pp. 897–898). Changes in the fire-regime can have broad ecological consequences (Block and Richter 2007, p. 1; Power *et al.* 2007, p. 898). Research in Ecuadorian *Polylepis-Gynoxys* mixed woodlands indicated a strong reduction in *P. incana* adult and seedling survival following a single fire. This indicates that *Polylepis* species do not recover well from even a single fire event (Cierjacks *et al.* 2007, p. 176). Because burning has been considered to be a key factor preventing *Polylepis* regeneration (Fjeldså 2002a, p. 112, 120; Fjeldså 2002b, p. 8), an accelerated fire cycle would exacerbate this situation.

As a result of the intensity of burning and grazing, *Polylepis* species are generally restricted to areas where fires cannot spread and where cattle and sheep do not normally roam—in stream ravines and on boulders, rock ledges, and sandy ridges (Fjeldså 2002a, p. 112; Fjeldså 2002b, p. 8). Grazing and trampling by domesticated animals further limit forest regeneration (Fjeldså 2002a, p. 120) and contribute to the degradation of remaining forest patches. Sheep and cattle have solid, sharp hooves that churn up the earth, damaging vegetation and triggering erosion (Purcell *et al.* 2004, p. 458; Engblom *et al.* 2002, p. 56). The loss of nutrient-rich soils leads to habitat degradation, which reduces the ability of the habitat to support dense stands of *Polylepis* woodlands (Jameson and Ramsay 2007, p. 42; Purcell *et al.* 2004, p. 458; Fjeldså 2002b, p. 8).

Polylepis habitat is also subject to conversion, degradation, or destruction caused by extractive activities such as firewood collection, timber harvest, and mining. Cutting wood for fuel has a consistent and ongoing impact throughout these three species' ranges (BLI 2009a, p. 2; BLI 2009b, pp. 1–2; BLI 2009c, pp. 1–2; BLI 2009d, pp. 1–2; BLI 2009f, p. 1; BLI 2009l, p. 1; WCMC 1998a, p. 1). The high-altitude zones where *Polylepis* occurs have long been inhabited by subsistence farmers who rely on *Polylepis* wood for firewood and charcoal production (Aucca-Chutas and Ramsay 2005, p. 287). Habitat degradation is occurring in the Santuario Histórico Machu Picchu in Peru (BLI 2009h, p. 4), and Parque Nacional y Área Natural de Manejo Integrado Madidi, Parque Nacional y Área Natural de Manejo Integrado Cotapata, and the colocated protected areas of Reserva Nacional de Fauna de Apolobamba, Área Natural de Manejo Integrado de Apolobamba, and Reserva de la Biosfera de Apolobamba in Bolivia (BLI 2009a, p. 2; BLI 2009b, p. 2; BLI 2009c, p. 2; BLI 2009d, p. 5).

Community-based *Polylepis* conservation programs fostered by the Peruvian nongovernmental organization Asociación Ecosistemas Andinos (ECOAN) have been under way in Peru and Bolivia since 2004, encompassing Cordilleras Vilcanota and Vilcabamba (Cusco Region), highlands of the Apurímac Region (Lloyd 2009, p. 10; Aucca-Chutas and Ramsey 2005, p. 287; ECOAN no date (n.d.), p. 1) and in the Ancash Region (MacLennan 2009, p. 2). These are known as the Vilcanota Project or ECOAN Projects (Aucca-Chutas and Ramsey 2005, p. 287; ECOAN n.d., p. 1). Local communities enter into and enforce management agreements aimed at mitigating the primary causes for *Polylepis* deforestation: burning, grazing, and wood-cutting. These projects foster local, sustainable use of resources (Aucca-Chutas and Ramsay 2005, p. 287; ECOAN n.d., p. 1; Engblom *et al.* 2002, p. 56), such as the use of more fuel-efficient wood-burning stoves that require half the amount of wood fuel (MacLennan 2009, p. 2).

Polylepis wood is also harvested for local commercial use, including within protected areas (BLI 2009a, p. 2; WCMC 1998a, p. 1). At one site, near Abra Málaga (Cusco Region), wood has been harvested for sale to local hotels in the towns of Urubamba and Ollantaytambo to support tourism activity (Engblom 2000, p. 1). Engblom (2000, p. 1) documented felling for firewood at this site in Cusco over a 2-day period that significantly reduced the size and quality of the forest patch. Purcell *et al.* (2004, p. 458) noted a positive correlation between habitat destruction and increased demand for (and the concomitant rise in the price of) fuel. *Polylepis* is also harvested for construction, fencing, and tool-making (Aucca-Chutas and Ramsey 2005, p. 287; BLI 2009a, p. 2). Commercial-scale activities such as clear cutting, logging, tourism, and infrastructure development are ongoing throughout these species' ranges, and alter otherwise sustainable resource use practices (MacLennan 2009, p. 2; Aucca-Chutas and Ramsay 2005, p. 287; Purcell and Brelsford 2004, pp. 156–157; Purcell *et al.* 2004, pp. 458–459; Engblom *et al.* 2002, p. 56; Engblom 2000, p. 2; WCMC 1998a, p. 1).

Human encroachment. Human encroachment and concomitant increasing human population pressures exacerbate the destructive effects of ongoing human activities throughout *Polylepis* habitat. Habitat destruction is often caused by a combination of human activities that contribute to habitat degradation. In the Cordillera de Vilcanota (Cusco, Peru), where an estimated 181 ash-breasted tit-tyrants were reported in 2007 (Aucca-Chutas 2007, pp. 4, 8), the rate of habitat loss was studied by comparing forest cover between 1956 and 2005. This study revealed a rate of habitat loss averaging only 1 percent. However, remaining patches of *Polylepis* woodland were small, with a mean patch size of 3 ha (7.4 ac). Four forest patches had disappeared completely; and no new patches were located within the study area (Jameson and Ramsay 2007, p. 42). Lloyd (2008, p. 532) studied bird foraging habits at three *Polylepis* woodland sites in the Cordillera Vilcanota during 2003–2005. The sites were described as highly fragmented, consisting of many small remnant patches (less than 1 ha (2.5 ac)) and scattered trees separated from larger woodland tracts (greater than 10 ha (25 ac)) by distances of 30–1,500 m (98–4,921 ft) (Lloyd and Marsden in press, as cited in Lloyd 2008, p. 532). ECOAN is working with local communities in this area to address habitat degradation and is working on *Polylepis* reforestation projects, which are discussed below in this document (ABC undated, pp. 1–3).

Extractive activities. Mining in *Polylepis* habitat occurs in the Peruvian regions of Ancash and Huánaco and in the Bolivian Department of La Paz (BLI 2009b, p. 1; BLI 2009d, p. 1; BLI 2009g, p. 1). As of 2006, Ancash was home to the largest zinc and copper mine in the world, with a monthly average production rate of 105,000 metric tons (231,485 pounds) of minerals per day and a 300-kilometer (km) (186-mile (mi)) underground pipeline that stretches from the mine to the port of Punta Lobitos along the coast (Antamina Mine 2006, pp. 4, 9; *www.antamina.com/02_operacion/En_puerto.html*). A mixture of water and minerals are transported by the pipeline (Biodiversity Neutral Initiative [BNI] 2006, p. 2). The actual mining footprint was estimated to be 2,221 hectares (5,488 acres) (BNI 2006, p. 2). As a result of mining activities, the habitat is affected by effluent containing metals such as copper, zinc, iron, and molybdenum) (BNI 2006, p. 7). Mining also occurs in ash-breasted tit-tyrant habitat in La Paz, Bolivia, where there are active gold, tin, silver, and tungsten mines, in addition to gravel excavation for cement production (USGS Minerals Yearbook 2005, pp. 4–7).

Recently, an accelerated rate of *Polylepis* forest destruction has been attributed to clear cutting for road building and industrialization projects, such as mining and construction of hydroelectric power stations (Purcell and Brelsford 2004, pp. 156–157). Between 1991 and 2003, approximately 200 ha (494 ac) of *Polylepis* habitat was destroyed. Thus, nearly two-thirds of the forest cover that existed in the 1990s no longer existed in 2003 (Purcell and Brelsford 2004, p. 155). Only 520 ha (1,285 ac) of *Polylepis* forest was estimated to remain in the Bolivian Department of La Paz, representing approximately a 40 percent rate of habitat loss in just over one decade. The researchers inferred that this rate of destruction could result in extirpation of the remaining *Polylepis* forest in La Paz within the next 30 years if no mitigation is implemented (Purcell and Brelsford 2004, pp. 157).

Since 2003, Antamina Mine has undertaken *Polylepis* habitat conservation programs within the areas affected by mineral extraction in partnership with ECOAN and other NGOs. Antamina Mine has committed to investing a million dollars in programs ranging from education and tourism, to organic agriculture and sustainable development, and reforestation of areas using *Polylepis* species. The Antamina Mining Company conservation program supports the planned reforestation within a 50,000-ha (123,552-ac) area. Planting of *Polylepis* species will assist in connecting habitat between two protected areas, Parque Nacional Huascarán and Zona Reservada de la Cordillera Huayhuash (Antamina Mine 2006, p. 5). As of 2009, the project had succeeded in restoring 150 ha (371 ac) of forest, with a 95 percent survival rate (MacLennan 2009, p. 1). Known as Corredor Conchucos, at least 30 ash-breasted tit-tyrants have recently been observed there (Aucca-Chutas 2007, p. 8).

Mining and hydroelectric projects open previously undisturbed areas to exploitation and attract people seeking employment (Purcell *et al.* 2004, p. 458). Increased urbanization and mining have led to increased infrastructure development. Road building and mining projects further facilitate human access to remaining *Polylepis* forest fragments, throughout these three species' ranges (Purcell *et al.* 2004, pp. 458–459; Purcell and Brelsford 2004, pp. 156–157), including protected areas. In the Bolivian Department of La Paz, one of the most transited highways in the country is located a short distance from the Parque Nacional y Área Natural de Manejo Integrado Cotapata (BLI 2009b, p. 2). Road building, mining, and other large-scale resource exploitations have major impacts on the habitat (Purcell and Brelsford 2004, p. 157).

Tourism. Ecotourism is considered a growing problem within protected areas where these three species occur such as in the Zona Reservada de la Cordillera Huayhuash in Peru, and in the Apolobamba protected areas in Bolivia (BLI 2009e, p. 5; Barrio 2005, p. 564). For example, in Huascarán National Park, irresponsible tourism is affecting habitat (TNC 2011, p. 6). Visitors form base camps at the foot of mountains and make expeditions to the summits. Tourists camp and hike for several days (TNC 2011, p. 6). Tourism along the climbing routes and circuits is causing progressive loss of vegetative coverage and is disturbing wildlife in the surrounding areas (TNC 2011, pp. 6–8). Poorly managed tourism results in contamination by unmanaged garbage and waste, unauthorized trail and road openings, soil erosion, and vegetation loss (TNC 2011, p. 6). Burying garbage can damage soil because it causes erosion as well as contamination. Garbage and waste left behind contaminates water (originating from glaciers), lakes, rivers, and streams.

Lack of *Polylepis* forest regeneration during nearly 50 years underscores the ramifications of continued burning and clearing to maintain pastures and farmland, which are prevalent activities throughout the ranges of these three species (BLI 2009a, p. 2; BLI 2009b, p. 2; Engblom *et al.* 2002, p. 56; Fjeldså 2002a, pp. 112, 120; Fjeldså 2002b, p. 8; Purcell *et al.* 2004, p. 458; WCMC 1998a, p. 1). These habitat-altering activities are considered to be key factors preventing regeneration of *Polylepis* woodlands (Fjeldså 2002a, p. 112, 120) and are factors in the historical decline of *Polylepis*-dependent bird species, including these three species (BLI 2009i, p. 6; Fjeldså 2002a, p. 116; Herzog *et al.* 2002, p. 94; Kessler 2002, pp. 97–101; Fjeldså and Kessler 1996).

The royal cinclodes' population size is considered to be declining in close association with continued habitat loss and degradation (BLI 2009i, p. 6). The royal cinclodes may once have been locally common and distributed across most of central to southern Peru and into the Bolivian highlands, in once-contiguous expanses of *Polylepis* forests (BLI 2009i, p. 1; Fjeldså 2002a, pp. 111–112, 115; BLI 2000, p. 345). In the Cordillera de Vilcanota (Cusco, Peru), where a large portion of the known royal cinclodes population occurs (116 birds were observed there, out of 189 total birds observed in 4 study sites in Peru) (Aucca-Chutas 2007, pp. 4, 8), *Polylepis* woodland habitat is highly fragmented and degraded. The species may have been extirpated from its type locality (Aricoma Pass, Puno), where *Polylepis* forest no longer occurs. A search for the species in 1987 resulted in no observations of the royal cinclodes (Engblom 2002, p. 57; Collar *et al.* 1992, p. 589). The royal cinclodes is not predicted to occur in Puno because habitat no longer exists there (InfoNatura 2007, p. 1), and only two birds have been observed at that location in recent years (Aucca-Chutas 2007, pp. 4, 8). Therefore, further habitat loss will continue to impact the species' already small population size (see Factor E).

Polylepis habitat throughout the range of the white-browed tit-spinetail has been and continues to be altered and destroyed as a result of human activities, including clear cutting and burning for agriculture and grazing lands and extractive activities including harvest for timber, firewood, and charcoal. It is estimated that only 2–3 percent of the dense *Polylepis* woodlands preferred by the species remain. Observations suggest that the white-browed tit-spinetail is able to persist in very small forest fragments (e.g., areas as small as 0.25 ha (0.6 ac) in Cordillera Vilcabamba); however, this depends on whether or not adequate

patches are near one another. Continued loss, degradation, and fragmentation of remaining *Polylepis* woodlands increase the degree of isolation (distance) between populations and subpopulations (and neighboring woodland fragments within the same site). Since individuals tend not to cross the larger gaps between neighboring woodland patches, increasing isolation (at whatever scale) is likely to affect the dispersal and other movement patterns between populations, and, therefore, impact the species' population persistence within the landscape.

The white-browed tit-spinetail prefers areas of high density of tall, large *Polylepis* trees, which usually correspond with areas containing dense and extensive moss ground cover. When habitat is degraded, there is often a lag time before the species losses are evident (Brooks *et al.* 1999, p. 1140), so the white-browed tit-spinetail may still be present, despite the low quality of its habitat. This species is not likely able to persist in forest remnants smaller than 1 ha (2.5 ac) (Gomez *in litt.* 2003, 2007 in BLI 2009o, p. 1), and the remaining *Polylepis* forest patch sizes have met or are approaching the lower threshold of this species' ecological requirements.

Larger concentrations of people put greater demand on the natural resources in the area (Donald *et al.* 2010, p. 26). Increasing demand for firewood upsets informal and otherwise sustainable community-based forest management traditions (Purcell and Brelsford, 2004, p. 157). Increasing human populations in the high-Andes of Bolivia and Peru have also resulted in a scarcity of arable land. This has led many farmers to burn additional patches of *Polylepis* forests to plant crops, even on steep hillsides that are not suitable for cultivation (BLI 2009b, p. 2; BLI 2009h, p. 1; Hensen 2002, p. 199). These ongoing farming practices result in the rapid loss of *Polylepis* forests stretching from Bolivia to Peru.

Thus, habitat degradation has serious impacts in *Polylepis* woodlands (Jameson and Ramsay 2007, p. 42), especially given these species' preference for dense woodlands (Fjeldså 2002a, p. 114; Smith 1971, p. 269). The fact that no new *Polylepis* forest patches had become established between 1956 and 2005 underscores the long-term ramifications of ongoing burning, clearing, grazing, and other habitat-altering human activities that are pervasive throughout these three species' ranges (BLI 2009f, p. 1; BLI 2009n, p. 4; Fjeldså 2002b, p. 8; WCMC 1998a, p. 1; WCMC 1998b, p. 1). These activities are considered to be key factors both in preventing regeneration of *Polylepis* woodlands and in the historical decline of *Polylepis*-dependent bird species, including these three species (Fjeldså 2002a, p. 116). Therefore, further habitat loss will continue to impact these species' already small population sizes (see Factor E).

Climate Fluctuations

Peru is subject to climate fluctuations that may exacerbate the effects of habitat fragmentation, such as those that are related to the El Niño Southern Oscillation (ENSO). The term ENSO refers to a range of variability associated with the southern trade winds in the eastern and central equatorial Pacific Ocean. El Niño events are characterized by unusual warming of the ocean, while La Niña events bring cooler ocean temperatures (Tropical Atmosphere Ocean (TAO) Project no date (n.d.), p. 1). Generally speaking, extreme ENSO events alter weather patterns, so that precipitation increases in normally dry areas, and decreases in normally wet areas. During an El Niño event, rainfall dramatically increases, whereas a La Niña event brings near-drought conditions (Holmgren *et al.* 2001, p. 89).

Climate change is characterized by variations in the earth's temperature and precipitation, causing changes in atmospheric, oceanic, and terrestrial conditions (Parmesan and Mathews 2005, p. 334). In addition to substrates (vegetation, soil, water), habitat is also defined by atmospheric conditions; changes in air temperature and moisture can effectively change a species' habitat. Periodic climatic patterns such as El Niño and La Niña can cause or exacerbate such negative impacts on a broad range of terrestrial ecosystems and Neotropical bird populations (Gosling *et al.* 2009, pp. 1–9; Plumart 2007, pp. 1–2; Holmgren *et al.* 2001, p. 89; England 2000, p. 86; Timmermann 1999, p. 694).

Over the past decade, there have been four El Niño events (1997–1998, 2002–2003, 2004–2005, and 2006–2007) and three La Niña events (1998–2000, 2000–2001, and 2007–2008) (National Weather Service (NWS) 2009, p. 2). Some research suggests the Andean highlands, and *Polylepis* species in particular, are strongly influenced by ENSO events (Christie *et al.* 2008, p. 1; Richter 2005, pp. 24–25). Christie *et al.* (2008, p. 1) found that tree growth in *P. tarapacana* is highly influenced by ENSO events because ENSO cycles on the Peruvian Coast are strongest during the growing season (December–February). ENSO-related droughts can increase tree mortality and dramatically alter age structure within tree populations, especially in cases where woodlands have undergone disturbance such as fire and grazing (Villalba and Veblen 1998, pp. 2624, 2637; Villalba and Veblen 1997, pp. 121–123).

Some changes in the physical environment include changes in precipitation and temperature and the frequency and severity of events (Huber and Gulledge 2011, p. 3; Solman 2011, p. 20; Laurance and Useche 2009, p. 1432; Margeno 2008, p. 1; Nuñez *et al.* 2008, p. 1). Climate change has also resulted in a variety of alterations in ecosystem processes, species distributions, and the timing of seasonal events such as bird migrations and the onset of flowering (GCCIUS 2009, pp. 79–88). Forecasts of the rate and consequences of future climate change are based on the results of extensive modeling efforts conducted by scientists around the world (Solman 2011, p. 20; Laurance and Useche 2009, p. 1432; Nuñez *et al.* 2008, p. 1; Margeno 2008, p. 1; Meehl *et al.* 2007, p. 753). While projections from global climate model simulations are informative and various methods exist to downscale global and national projections to the regional or local area in which the species lives, in many cases, downscaled projections are still being developed (Solman 2011, p. 20; Insel *et al.* 2009; Nuñez *et al.* 2008, p. 1; Marengo 2008, p. 1), and the local effect of climate change on *Polylepis* is unclear.

Jetz *et al.* (2007, p. 1,211) investigated the effects of climate change on 8,750 land bird species that are exposed to ongoing manmade land cover changes (i.e., habitat loss). They determined that narrow endemics such as these three species are likely to suffer greater impacts from climate change combined with habitat loss (Jetz *et al.* 2007, p. 1213). This is due to the species' already small population size, specialized habitat requirements, and heightened risk of extinction from stochastic demographic processes (see also Factor E). According to this study, by 2050, up to 18 percent of the ash-breasted tit-tyrant's current remaining range is likely to be unsuitable for this species due to climate change. By 2100, one estimate predicted that about 18 to 42 percent of the species' range is likely to be lost as a result of climate change (Jetz *et al.* 2007, Supplementary Table 2, p. 73). With respect to the royal cinclodes, researchers predicted that, by 2050, approximately 3 to 15 percent of its current remaining range is likely to be unsuitable for this species due to climate change and, by 2100, it is predicted that about 8 to 18 percent of the species' range is likely to be lost as a direct result of global climate change

(p. 89). With respect to the white-browed tit-spinetail, the researchers predicted that, by 2050, another one percent of its current remaining range is likely to be unsuitable for this species due to changes in the local climate. By 2100, it is predicted that about 43 percent of the species' range is likely to be lost as a direct result of global climate change (p. 89).

There is conflicting information about how changes in climate might affect these species' habitat, which is associated with cloud mist-zones. Fossil records indicate that these species' habitat, *Polylepis* forest in the central Andes, was at a maximum during warm, wet conditions approximately 1,000 years ago, but might be at a minimum during the warmer and drier-than-modern conditions predicted for later this century (Gosling *et al.* 2009, pp. 2, 10). The maximum abundance of *Polylepis* is coincident with times of warmer, wetter conditions, while warmer, drier conditions minimize optimum habitat (Gosling 2009, p. 18). This suggests that *Polylepis* forests may become scarcer. If these three bird species are unable to adapt to other habitat, the lack of mature *Polylepis* forests may affect these species. However, this same paper and other research indicate that *Polylepis* habitat may experience more moisture (Gosling *et al.* 2009, p. 11; Insel *et al.* 2009, unpaginated; Marengo 2008, p. 4). The effects of climate change are still uncertain, in part due to the localized effects of the Andes (Insel *et al.* 2009, pp. 1–2). Other recent regional models project both an increase in wet-season precipitation and a decrease in dry-season precipitation over most of South America (Kitoh *et al.* 2011, p. 1; Nuñez *et al.* 2008, p. 1081). In the future, for almost the entire South American continent, precipitation intensity is expected to increase (Kitoh *et al.* 2011, p. 2; Avalos-Roldán 2007, p. 76).

Other new information suggests that climate change may not be a significant factor affecting species in *Polylepis* forests (Fjeldså 2010 pers. comm.). Although stronger ENSO impacts may cause drier conditions in Peru's western cordillera, the effect further east would likely be opposite. The areas where the ash-breasted tit-tyrant occurs, for example, correspond with peaks of endemism in the humid Peruvian Andes. These areas have been found to correlate with stable local environments, likely due to interactions between atmospheric flows and local topography (Fjeldså 2010 pers. comm.). The *Polylepis* forests generally occur at the transition between deep Andean valleys and cold highlands, where the mist-zone is determined more by topography rather than by regional or global climate (Fjeldså 2010 pers. Comm; Fjeldså *et al.* 1999). This characteristic is demonstrated by the persistence of relict endemic species in these places. Therefore, preferred *Polylepis* habitat may be less susceptible to larger scales of climate change.

Unpredictable climate fluctuations may exacerbate the effects of habitat fragmentation (Jetz *et al.* 2007, pp. 1,211, 1,213; Mora *et al.* 2007, p. 1,027). In the face of an unpredictable climate, the risk of population decline due to habitat fragmentation is heightened. Researchers have found that the combined effects of habitat fragmentation and climate change (in this case, warming) had a synergistic effect, rather than additive (Laurance and Useche 2009, p. 1427; Mora *et al.* 2007, p. 1,027). In other words, the interactive effects of both climate fluctuation and habitat fragmentation led to a greater population decline than if either climate change or habitat fragmentation were acting alone on populations. However, the effect of a changing climate on these species' habitat is still unclear.

Summary of Factor A—Ash-breasted tit-tyrant, royal cinclodes, and white-browed tit-spinetail (Polylepis habitat)

These three species are dependent on *Polylepis* habitat, with a preference for dense, shady woodlands. Although the white-browed tit-spinetail has been recorded in patches of woodland as small as 0.25 ha (0.6 ac), the ash-breasted tit-tyrant and the royal cinclodes both require larger ranges than the white-browed tit-spinetail: 1–2 ha (2.5–5 ac) and 3–4 ha (7–10 ac) respectively. In the Department of La Paz, Bolivia, which encompasses Bolivia's largest urban area, most of the *Polylepis* forest had been eliminated prior to the late 1990s (Purcell and Brelsford 2004, p. 157). In Cordillera Vilcanota (Cusco, Peru), where a large concentration of the royal cinclodes individuals was observed in 2007, the average size of forest fragments just meets the lower threshold of the species' ecological requirements.

Polylepis habitat throughout their range has been and continues to be altered and destroyed as a result of human activities, including clear cutting and burning for agriculture and grazing lands; tourism; extractive activities including firewood, timber, and minerals; human encroachment, and concomitant increased pressure on natural resources. Forest fragments in some portions of these three species' ranges are approaching the lower threshold of the species' ecological requirements. The historical decline of habitat suitable for these species is attributed to the same human activities that are causing habitat loss today. Ongoing and accelerated habitat destruction of the remaining *Polylepis* forest fragments in both Peru and Bolivia continues to reduce the quantity, quality, distribution, and regeneration of remaining patches. Some NGOs and local communities are conducting reforestation efforts in areas such as the Cordillera Yilcanota, Peru (ECOAN 2012). However, the growth of *Polylepis* species will take some time, and the results of these efforts are not yet clear. Human activities that degrade, alter, and destroy habitat are ongoing throughout the species' range, including within protected areas.

Although some climate models predict that fluctuations in precipitation and temperature, particularly ENSO events, could affect this species' habitat, other research suggests that its very local climate will not be significantly affected (Fjeldså 2010 pers. comm.; Gosling *et al.* 2009). Climate change models, like all scientific models, produce projections that have some uncertainty because of the assumptions used, the data available, and the specific model features (Fernanda and Solman 2010, p. 533). The science supporting climate model projections as well as models assessing their impacts on species and habitats will continue to be refined as more information becomes available, but there are still uncertainties. Nevertheless, the species' population declines are commensurate with the declining habitat. Therefore, we find that destruction and modification of habitat threaten the continued existence of these three species throughout their range (primarily *Polylepis*-dominant habitat).

Junín grebe and Junín rail (Lake Junín)

1. *Junín grebe.* The Junín grebe is endemic to Lake Junín, where it resides year-round. The species is completely dependent on the open waters and marshland margins of the lake for feeding and on the protective cover of the marshlands during the breeding season (BLI 2009a, p. 1; BLI 2008, p. 1; Tello 2007, p. 3; Fjeldså 1981, p. 247). The current estimated range of the species is 143 km² (55 mi²) (BLI 2009b, p. 1). However, its actual range is smaller (see *http://www.birdlife.org/datazone/speciesfactsheet.php?id=3644* for a range map of the species), because the species is restricted to the southern portion of the lake (BLI 2009b, p. 1; Gill and Storer in Fjeldså 2004, p. 200; Fjeldså 1981, p. 254). Breeding season

begins in November (O'Donnel and Fjeldså 1997, p. 29; Fjeldså 1981, pp. 44, 246). Junín grebes build their nests and obtain their primary prey, pupfish, in the expansive offshore flooded marshlands that may extend into the lake up to 2–5 km (1–3 mi) from shore (BLI 2008, p. 1; Tello 2007, p. 3; Fjeldså 2004, p. 200; O'Donnel and Fjeldså 1997, pp. 29–30; Fjeldså 1981, p. 247).

2. *Junín rail.* The Junín rail is also endemic to Lake Junín, where it also resides year-round and is restricted to two localities within the shallow marshlands encircling Lake Junín (BLI 2009b, p. 2; Fjeldså 1983, p. 278). The current estimated range of the species (160 km^2, 62 mi^2) (BLI 2009b, p. 1) is likely an overestimate of this species' range (see *www.birdlife.org/datazone/speciesfactsheet.php?id=2842* for a range map of the species). The species is known only from two discrete locations, which are near Ondores and Pari, on the southwest shore of the lake.

The quality of both Junín grebe and Junín rail habitat and their reproductive success is highly influenced by water levels and the water quality of the lake. Water levels in the lake are affected by hydropower generation which is exacerbated by unpredictable climate fluctuations (such as drought or excessive rain). Water quality in Lake Junín has been compromised by contamination, in part due to waste from mining activities that drain into the lake (ParksWatch 2012, pp. 2–3). Environmental Mitigation Programs (PAMA) have been implemented to combat pollution from mining wastes, and impacts have been reduced significantly because miners have begun to use drainage fields and residual water is being recycled (ParksWatch 2012). However, the PAMAs do not adequately address responsibilities for the mining wastes discharged into the San Juan River course and delta; sediments containing heavy metals in the San Juan River delta leach into Lake Junín (also see Factor D). Additionally, the Upamayo Dam, located at the northwestern end of the lake, has been in operation since 1936, and the lake water is used to power the 54-megawatt Malpaso hydroelectric plant (ParksWatch 2006, p. 5; Martin *et al.* 2001, p. 178). Dam operations have caused seasonal water level fluctuations up to 2 m (6 ft) in Lake Junín (Martin and McNee 1999, p. 659). Under normal conditions, water levels are lower in the dry season (June to November), and the marshlands can become partially or completely dry (ParksWatch 2009, p. 2). The floodgates of the dam are often opened during the dry season (ParksWatch 2009, p. 2), and water offtake for hydropower generation further drains the lake, such that, by the end of the dry season, in November, the marshlands encircling the lake are more apt to become completely desiccated (Fjeldså 2004, p. 123).

Reduced water levels directly impact the Junín grebe's breeding success by reducing the amount of available nesting habitat (BLI 2008, p. 1; Fjeldså 2004, p. 200). The giant bulrush marshlands, upon which the Junín grebe relies for nesting and foraging habitat, have virtually disappeared from some sections of the lake (O'Donnel and Fjeldså 1997, p. 29). When the marshlands are completely desiccated, the Junín grebe is reported to not breed at all (Fjeldså 2004, p. 123).

Reduced water levels impact the species by reducing the Junín grebe's primary prey, pupfish *(Orestias* species) (Fjeldså 2004, p. 200). The perimeter of the flooded marshlands provides the primary recruitment habitat for fish in the lake particularly during extremely dry years (Fjeldså 2004, p. 200; O'Donnel and Fjeldså 1997, p. 29). Submerged aquatic vegetation, habitat for pupfish, has become very patchy, further triggering declines in the prey population. Few marshlands are permanently inundated now due to the power generation of the Upamayo Dam, and the giant bulrushes that previously provided extensive cover for this species for breeding and feeding have virtually disappeared, reducing both nesting and foraging habitat for the Junín grebe. The reduction in nesting and foraging habitat is believed to contribute to mass mortality of Junín grebes during extreme drought years such as those that occurred during 1983–1987, 1991, and 1994–1997 (O'Donnel and Fjeldså 1997, p. 30).

Manipulation of the Lake Junín's water levels also results in competition between the white-tufted grebe *(Rollandia rolland)* and the Junín grebe for food resources during the Junín grebe's breeding season (Fjeldså 2004, p. 200). During the breeding season, in years when water levels remain high, the Junín grebe and white-tufted grebe are spatially separated. White-tufted grebes use the interior of the reed marsh, and Junín grebes use the remaining at the edges of the marshlands, closer to the center of the lake (Fjeldså 1981, pp. 245, 255). Near the end of the dry season, as early as October, when water levels are lower in the lake and the marshlands can partially or completely dry out (BLI 2009b, p. 1; ParksWatch 2009, p. 2), thousands of white-tufted grebes move from the interior of the marshlands to the edges, where they compete with the Junín grebe for food (Fjeldså 1984, pp. 413–414). Competition becomes more critical the longer the water level remains low at the end of the dry season, and activities that further reduce low water levels only exacerbate this competition (Fjeldså 1981, pp. 252–253).

Water quality affects the availability of habitat for both the endemic Junín grebe and Junín rail. The water in Lake Junín has been contaminated from mining, agricultural activities and organic matter and wastewater runoff from local communities around the lake (Shoobridge 2006, p. 3; ParksWatch 2006, pp. 5, 19; Martin and McNee 1999, pp. 660–661). Heavy metal contamination throughout the lake has exceeded established thresholds for aquatic life throughout at least one-third of the lake, and has rendered the northern portion of the lake lifeless (BLI 2008, p. 4; Shoobridge 2006, p. 3; Fjeldså 2004, p. 124; Martin and McNee 1999, pp. 660–662; ParksWatch 2006, pp. 20–21). At the lake's center, lake bottom sediments are lifeless and anoxic (having low levels of dissolved oxygen) due to contaminants (Fjeldså 2004, p. 124; Martin *et al.* 2001, p. 180), and the lakeshore has become polluted with toxic acidic gray sediment (O'Donnel and Fjeldså 1997, p. 30). Martin *et al.* (2001, p. 180) determined that sediments at the lake's center are contaminated with copper, zinc, and lead and are anoxic. High concentrations of dissolved copper, lead, and zinc have damaged an estimated one-third of the lake (ParksWatch 2006, pp. 2, 20; Shoobridge 2006, p. 3; Martin and McNee 1999, pp. 660–661).

There is no vegetation at the northern end of the lake (ParksWatch 2006, pp. 20–21; Fjeldså 2004, p. 124), and ongoing contamination has the potential to reduce vegetative cover in other areas of the lake, including the marshlands where these two species occur. These pollutants have severely affected animal and plant populations in the area, contributing to mortality of species around the lake including the Junín rail and the Junín grebe (ParksWatch 2006, pp. 3, 20), and are likely to reduce the health and fitness of these two species (see Factor C).

Lake Junín is a sink for several streams that transport mining wastes and other pollution downstream and into the lake (ParksWatch 2006, p. 19). The San Juan River is the primary source of water for Lake Junín, and feeds into the lake from the northern end (Shoobridge 2006, p. 3; Martin and McNee 1999, pp. 660–661; Fjeldså 1981, p. 255). Tests indicate that the San Juan

River contains trace metals including copper, lead, mercury, and zinc in excess of currently accepted aquatic life thresholds (Martin and McNee 1999, pp. 660–661). Non-point-source pollutants from agricultural fertilizers such as ammonium and nitrate concentrations are also suspended in the water column (Martin and McNee 1999, pp. 660–661). Iron oxide contamination is prominently visible near the outflow of the San Juan River (iron oxide produces a reddish tinge, which colors the water and reed borders). Vegetation near the river's outflow is completely absent (ParksWatch 2006, pp. 20–21; Fjeldså 2004, p. 124), and this portion of the lake has been rendered lifeless by the precipitation of iron oxide from mining wastewaters (BLI 2008, p. 4). The giant bulrush marshlands, which once existed in great expanses around the entire perimeter of the lake, have virtually disappeared, and at least one species of catfish *(Pygidium oroyae)* may have been extirpated from the lake (O'Donnel and Fjeldså 1997, p. 29).

Heavy metal contamination is not limited to the northern end of the lake (ParksWatch 2006, p. 20), but extends throughout the southern end (Martin and McNee 1999, p. 662), where the Junín grebe and Junín rail are now restricted (BLI 2009b, p. 1; Fjeldså 1981, p. 254; Gill and Storer in Fjeldså 2004, p. 200). In 2009, conservation organizations and civil society groups demanded action to reverse the deterioration of Lake Junín and requested an independent environmental audit and continuous monitoring of the lake (BLI 2009b p. 4). The conservation groups BLI, American Bird Conservancy (ABC), Asociación Ecosistemas Andinos (ECOAN), and INRENA adopted the Junín grebe as the symbol of wetland conservation for the high Andes (BLI 2009c, p. 1). A translocation has been a consideration for the conservation of the Junín grebe since the mid-1990s; however, no suitable habitat for the species has been located (BLI 2009b, p. 2; O'Donnel and Fjeldså 1997, pp. 30, 35). To date, none of these conservation organization's activities have been able to adequately curb the ongoing habitat degradation.

The effects of habitat alteration and destruction (such as those caused by artificially reduced water levels and water contamination) are exacerbated by unpredictable climate fluctuations (such as drought or excessive rains) (Jetz *et al.* 2007, pp. 1,211, 1,213; Mora *et al.* 2007, p. 1027). Peru is subject to unpredictable climate fluctuations, such as those that are related to the ENSO. Changes in weather patterns, such as ENSO cycles (El Niño and La Niña events), tend to increase precipitation in normally dry areas, and decrease precipitation in normally wet areas (Holmgren *et al.* 2001, p. 89; TAO Project n.d., p. 1); exacerbating the effects of habitat reduction and alteration on the decline of a species (Jetz *et al.* 2007, pp. 1211, 1213; Mora *et al.* 2007, p. 1027; Plumart 2007, pp. 1–2; Holmgren *et al.* 2001, p. 89; England 2000, p. 86; Timmermann 1999, p. 694), especially for narrow endemics such as the Junín grebe and Junín rail. Moreover, the Junín grebe's low breeding potential is considered to be a reflection of its adaptation to being in a highly predictable, stable environment (del Hoyo *et al.* 1992, p. 195).

The Junín grebe's breeding success and population size are highly influenced by the climate, with population declines occurring during dry years, population increases during rainy years, and mortality during extreme cold weather events. Several times during the last two decades (e.g., 1983–1987, 1991–1992, 1994–1997), the Junín grebe's population declined to 100 birds or less following particularly dry years (BLI 2009b, p. 2; BLI 2008, pp. 1, 3–4; Fjeldså 2004, p. 200; Elton 2000, p. 3). There have been short-term population increases of 200 to 300 birds in years with higher rainfall amounts following El Niño events (such as the 1997–1998 and 2001–2002 breeding seasons) (Valqui pers. comm. in BLI 2009b, p. 2; PROFONANPE 2002, in Fjeldså 2004, p. 133). However, excessive rains also can increase contamination in Lake Junín, which decreases the amount of suitable habitat for the species and has adverse effects on the species' health (see Factor C). Many Junín grebes died during extremely cold conditions in 1982 (BLI 2008, p. 4). In 2007, the population declined again following another cold weather event (Hirshfeld 2007, p. 107). These ENSO cycles are ongoing, having occurred several times within the last decade (NWS 2009, p. 2), and evidence suggests that ENSO cycles have already increased in periodicity and severity (Richter 2005, pp. 24–25; Timmermann 1999, p. 694), which can exacerbate the negative impacts of habitat destruction on a species.

Habitat degradation and alteration caused by fluctuating water levels and environmental contamination are considered key factors in the Junín grebe's historical decline (Gill and Storer, pers. comm. in Fjeldså 2004, p. 200; Fjeldså 1981, p. 254). The Junín grebe has experienced a population decline of 14 percent in the past 10 years, and this decline is expected to continue as a result of deteriorating habitat and water quality (BLI 2009b, pp. 1, 6–7). Therefore, further habitat degradation is expected to continue impacting this species' already small population (see Factor E).

The habitat in and around Lake Junín is subjected to manmade activities that have altered, destroyed, and degraded the quantity and quality of habitat available to the Junín rail. These activities include: (1) Artificial manipulation of water levels; (2) water contamination; and (3) plant harvesting in the species' breeding grounds. The negative impacts of these activities are accentuated by unpredictable climate fluctuations such as droughts or excessive rains (Jetz *et al.* 2007, pp. 1211, 1213; Mora *et al.* 2007, p. 1027).

Lake drawdown has been known to cause water levels to fluctuate seasonally up to 2 m (6 ft) (Martin and McNee 1999, p. 659) and has at times caused complete desiccation of the marshlands by the end of the dry season (Fjeldså 2004, p. 123). The ground-nesting Junín rail breeds near the end of the dry season, in September and October, and the species relies on the dense vegetative cover of the rushes on the lake perimeter in which to build their nests (BLI 2009b, p. 2). Eddleman *et al.* (1988, p. 463) noted that water drawdown before nesting season disrupts nest-building initiation by rails. Therefore, water drawdown near the end of the dry season that results in complete desiccation of the shallow marshlands (BLI 2009b, p. 1; ParksWatch 2009, p. 2) is likely to disrupt Junín rail nest initiation.

Experts believe that the Junín rail is restricted to the marshes at the southwestern corner of the lake because of the high level of contamination at the northwestern margins of the lake (Martin and McNee 1999, p. 662). Experts also believe that pollution and artificial water level fluctuations will continue to have adverse consequences for the vegetation surrounding the lake and, therefore, the Junín rail (BLI 2007, p. 1; J. BLI 2000, p. 170; Fjeldså *in litt.*, 1987, as cited in Collar *et al.* 1992, p. 190). In some places, the tall marshlands, which rely on inundated soils to thrive, have virtually disappeared because the reed-beds are no longer permanently inundated (O'Donnel and Fjeldså 1997, p. 30). Moreover, as the marshes dry, livestock (primarily sheep *(Ovis aries)*, but also cattle *(Bos taurus)*, and some llamas *(Llama glama)* and alpacas *(Llama pacos))* move into the desiccated wetlands surrounding the lake to graze. Overgrazing is a year-round problem around Lake Junín because the entire

lakeshore is zoned for grazing a large number of livestock (approximately 60,000–70,000 head) (ParksWatch 2006, pp. 12, 19). During the dry season, the livestock moves into the marshlands to graze, compacting the soil and trampling the vegetation (ParksWatch 2006, p. 31). Increased access to the wetlands during the end of the dry season, which coincides with the inception of the Junín rail's nesting season, likely disrupts the rail's nesting activities or leads to nest trampling. Therefore, activities that increase lakeshore access, such as water drawdown, decrease the amount of available habitat for the Junín rail (for nesting and feeding) and are likely to negatively impact the Junín rail's reproduction (through trampling) and mating habits (through disturbance) (BLI 2009b, p. 1).

Local residents also harvest and burn cattails from the marshland habitat, which the Junín rail depends upon. Cattails are harvested to assemble rafts, baskets, and mats and as forage for livestock (ParksWatch 2006, p. 23). Cattails are also burned to encourage shoot renewal (ParksWatch 2006, p. 23) and to facilitate hunting the montane guinea pig *(Cavia tschudii),* which seeks cover in the cattail marshes and is part of the local human diet. Burning cattail communities has a negative and long-lasting impact on species that use the cattails as permanent habitat (INRENA 2000, as cited in ParksWatch 2006, p. 22; Eddleman *et al.* 1988, p. 464), including the Junín rail, which relies on the dense vegetative cover of the marshlands for year-round residence and nesting (BLI 2009b, p. 2; BLI 2007, p. 1; BLI 2000, p. 170).

Summary of Factor A—Junín grebe and Junín rail

The habitat in and around Lake Junín, where these two species are endemic, has been and continues to be altered and degraded as a result of human activities, including human-induced water level fluctuations to generate hydropower and water contamination caused by mining waste, agricultural and organic runoff from surrounding lands, and wastewater from local communities. Water levels in Lake Junín are manipulated to generate electricity, which leads to dramatic fluctuations in water levels of up to 1.8 m (6 ft). The Junín grebe is dependent on the quantity and quality of lake water for breeding and feeding. It is dependent on the marshland habitat surrounding the lake for breeding and feeding and relies on the protective cover of flooded marshlands for nesting. The Junín rail nests on the ground, within the protective cover of the marshlands. As water drawdown occurs near the end of the dry season and the inception of these two species' mating seasons, portions of the marshlands may dry out completely. Reductions in water levels decrease the availability of suitable breeding and foraging habitat, and decrease the availability of the Junín grebe's primary prey, the pupfish, forcing competition with the white-tufted grebe for food. Drought years have a negative impact on these two species, resulting in severe population fluctuations due to poor breeding success and limited recruitment of juveniles into the adult population. The severe dry conditions can cause total breeding failure.

Although these two species may rebound during wetter years (i.e., following El Niño events), excessive rain also decreases the suitable habitat for these two species, as pollution washes into the water from around the lake and the upstream rivers that feed the lake, increasing contamination levels in Lake Junín. This increased contamination affects these two species' health and has resulted in mortality of both species. Severe water contamination has rendered the northwestern portion of the lake lifeless, devoid of aquatic and terrestrial species. Experts believe that these two species once inhabited the entire lake, but they are now confined to the southern portion of the lake due to water contamination. Elevated levels of heavy metals may reduce their fitness and overall viability. Nest disturbance also occurs due to livestock grazing in the area. Therefore, we find that destruction and modification of habitat are threats to the continued existence of the Junín grebe and Junín rail throughout their ranges.

Peruvian plantcutter

The Peruvian plantcutter is dependent upon undisturbed *Prosopis pallida* dry forest with floristic diversity (Flanagan and More 2003, p. 4; Engblom 1998, p. 1; Collar *et al.* 1992, p. 805). In northwestern Peru, *P. pallida* dry forest was historically contiguous, covering approximately 7,000 km² (2,703 mi²) of the coastal lowland of northwestern Peru (Ferreyera 1983, p. 248). There were also extensive wooded stands of small to medium trees of *P. pallida, Acacia* spp., *Capparis* spp., and *Salix* spp., along permanent lowland rivers, which have since been cleared for agricultural purposes (Lanyon 1975, p. 443).

Today, with the exception of three relatively large intact dry forests (i.e., Talara Province, Murales Forest, and Pómac Forest Historical Sanctuary), the vast majority of *P. pallida* dry forest, arid lowland scrub, and riparian vegetation has been reduced due to human activities. Seasonally dry tropical forests are considered the most threatened of all major tropical forest types (Stotz *et al.* 1996, p. 51; Janzen 1988, p. 13). The Peruvian plantcutter has been extirpated from most of its historical sites due to loss or degradation of habitat (Flanagan *et. al. in litt.* 2009, pp. 1–15; Elton 2004, p. 1; Snow 2004, p. 69; Flanagan and More 2003, pp. 5–9). Current information indicates that the vast majority of occupied sites of the Peruvian plantcutter are small, remnant, disjunct patches of *P. pallida* dry forest, each a few acres in size (Flanagan *et. al. in litt.* 2009, pp. 2–7; Snow 2004, p. 69; Walther 2004, p. 73).

Habitat loss, conversion, and degradation throughout the Peruvian plantcutter's range have been and continue to occur as a result of human activities, including:

(1) Clearcutting and burning of dry forest for agriculture and other purposes (BLI 2009a, p. 2; Flanagan *et al.* 2005, p. 244; Williams 2005, p. 2; Snow 2004, p. 69; Walther 2004, p. 73; Bridgewater *et al.* 2003, p. 132; Engblom 1998, p. 1; Ridgely and Tudor 1994, p. 734; Collar *et al.* 1992, p. 806);

(2) Extraction activities, including cutting for timber, firewood, and charcoal production (BLI 2009d, pp. 1–2; Rodriguez *et al.* 2007, p. 269; Williams 2005, p. 1; Snow 2004, p. 69; Best and Kessler 1995, p. 196; Ridgely and Tudor 1994, p. 734);

(3) Grazing by goats of *P. pallida* dry forests, and arid scrub and riparian vegetation *(Capra* species) (BLI 2009a, p. 2; More 2002, p. 37; Snow 2004, p. 69; Best and Kessler 1995, p. 196);

(4) Human encroachment (Fernandez-Baca *et al.* 2007, p. 45); and

(5) Unpredictable climate fluctuations that exacerbate human activities and encourage further habitat destruction (Block and Richter 2007, p. 1; Jetz *et al.* 2007, p. 1211; Richter 2005, p. 26).

The vast majority of *P. pallida* dry forest habitat has been converted to commercial agricultural production, which is the primary factor in the historical decline of the Peruvian plantcutter (BLI 2009a, p. 2; Williams 2005, p. 2; Snow 2004, p. 69; Walther 2004, p. 73; Engblom 1998, p. 1; Ridgely and Tudor 1994, p. 734; Collar *et al.* 1992, p. 806). Agriculture in the coastal lowlands of northwestern Peru consists of modern large, privately owned farms and large cooperatives that primarily produce crops (e.g., sugarcane, cotton, rice) for export (Roethke 2003, pp. 58–59; Lanyon 1975, p. 443).

Continual habitat destruction and degradation of the dry forest is also due

to firewood cutting and charcoal production. *P. pallida* is the dominant tree of the dry forest habitat, and is highly sought after because the wood provides an important source of high-quality cooking fuel (Pasiecznik *et al.* 2001, p. 75; Brewbaker 1987, p. 1). Throughout the Peruvian plantcutter's range, whole trees, branches, and roots of *P. pallida* are cut for firewood and production of charcoal, which is used for cooking fuel in homes, restaurants, and businesses that use brick kilns, both locally and in urban centers (Flanagan *et al. in litt.* 2009, p. 7). Wood of *P. pallida* is also used for construction and fence posts (Pasiecznik *et al.* 2001, p. 78). Additionally, roots of older *P. pallida* trees are used in wooden art crafts (BLI 2009a, p. 2).

Talara Province (in the Piura Region) contains the largest remaining intact *P. pallida* dry forest in northwestern Peru, encompassing approximately 50,000 ha (123,553 ac) (Flanagan *et al. in litt.* 2009, pp. 2–3; Walther 2004, p. 73; Flanagan and More 2003, p. 5). The Province also has the largest subpopulation of the Peruvian plantcutter, reportedly between 400 and 600 individuals or approximately 60 to 80 percent of the total population (BLI 2009a, p. 2; Williams 2005, p. 1; Elton 2004, pp. 3–4; Snow 2004, p. 69; Walther 2004, p. 73). Until recently, a large portion of the Province, including *P. pallida* dry forest habitat, was owned by the State-owned petroleum company PetroPeru, which prohibited access to approximately 36,422 ha (90,000 ac). Under the management of PetroPeru, the *P. pallida* dry forest was not subject to the same habitat destruction and degradation activities (e.g., clearing of trees, firewood cutting, and charcoal production) as other dry forest habitat areas (Elton 2004, pp. 3–4; Hinze 2004, p. 1). Recently, the land was reverted to the Peruvian Government, and it is unclear whether the government plans to issue private concessions as in other areas of the Province (Elton 2004, p. 4). Consequently, there have been efforts, including a formal petition to the Peruvian Government, to create a 4,856 to 10,000-ha (12,000 to 24,710-ac) protected reserve for the northern subpopulation of the Peruvian plantcutter (Elton 2004, p. 4; Walther 2004, p. 73). However, the government has not designated such a reserve for the species (NCI 2011, Williams 2005, p. 3; Elton 2004, p. 4).

Habitat destruction and degradation of *P. pallida* dry forest, including firewood cutting and charcoal production, is ongoing in the Talara Province, including on the land previously owned by PetroPeru and an area identified as the Talara Important Birding Area (IBA) by BLI (Flanagan *in litt.* 2009, p. 1). Since 2005, there has been extensive cutting and clearing of *P. pallida* trees for fuel to cook and dry Humboldt giant squid (*Dosidicus gigas*) carcasses (Flanagan *et al. in litt.* 2009, p. 8). The most important commercial fishery of the Humboldt giant squid occurs along the coast of Peru (Zeidberg and Robison 2007, p. 12,948; UNEP 2006, p. 33). Harvested carcasses are transported by truck from the Talara port to recently cleared areas in the dry forest, where they are boiled and dried (Flanagan *et al. in litt.* 2009, p. 8). This fishery not only adds to the collection pressure on *Prosopis* species for use as fuel, but also adds to forest clearing in the area. Another relatively new demand for *P. pallida* firewood is associated with the illegal extraction of crude oil from above-ground pipes in the Talara Province. The stolen oil is distilled by heating it with firewood (Flanagan *et al. in litt.* 2009, p. 8). *Capparis scabrida* (locally known as sapote) is a tree that occurs with *P. pallida* and is also a food source for the Peruvian plantcutter. Although the tree is listed as critically endangered by the Peruvian Government, the highly sought-after wood is cut to produce handicrafts for the local, national, and international markets and is used for firewood and charcoal production (Rodriguez *et al.* 2007, p. 269).

Habitat alteration is also caused by grazing goats, which remove or heavily degrade the shrubs and trees (BLI 2009a, p. 2; Williams 2005, p. 2; Elton 2004, pp. 3–4; Snow 2004, p. 69; BLI 2000, p. 402). The seed pods and leaves of *P. pallida* provide highly nutritious fodder for goats (Pasiecznik *et al.* 2001, p. 95; Brewbaker 1987, pp. 1–2). Goats roam freely and graze on trees and shrubs, particularly lower branches close to ground which are preferred by the Peruvian plantcutter for foraging and nesting (Williams 2005, p. 2; Elton 2004, pp. 3–4; Snow 2004, p. 50).

Human encroachment and concomitant increasing human population pressures exacerbate the destructive effects of ongoing human activities (e.g., clearing of *P. pallida* dry forest, firewood cutting, and charcoal production) throughout the Peruvian plantcutter's range. Although the coastal lowlands represent only about 10 percent of the country's total territory, many urban centers are located on the coast, which represent approximately 52 percent of the total population of Peru (Fernandez-Baca *et al.* 2007, p. 45). Large concentrations of people put greater demand on the natural resources in the area, which spurs additional habitat destruction and increases infrastructure development that further facilitates encroachment.

Peruvian plantcutters are also impacted by unpredictable climate fluctuations that exacerbate the effects of habitat fragmentation. Changes in weather patterns, such as ENSO cycles (El Niño and La Niña events), tend to increase precipitation in normally dry areas, and decrease precipitation in normally wet areas (Holmgren *et al.* 2001, p. 89; TAO Project n.d., p. 1), while intensifying the effects of habitat fragmentation on the decline of a species (Jetz *et al.* 2007, pp. 1211, 1213; Mora *et al.* 2007, p. 1027; Plumart 2007, pp. 1–2; Holmgren *et al.* 2001, p. 89; England 2000, p. 86; Timmermann 1999, p. 694), especially for narrow endemics (Jetz *et al.* 2007, p. 1213) such as the Peruvian plantcutter.

The arid terrestrial ecosystem of northwestern Peru, where the Peruvian plantcutter occurs, is strongly influenced by the ENSO cycle (Rodriguez *et al.* 2005, p. 1), which can have severe and long-lasting effects (Mooers *et al.* 2007, p. 2; Holmgren *et al.* 2006a, p. 87). The amount of rainfall during an El Niño year can be more than 25 times greater than during normal years in northern Peru (Holmgren *et al.* 2006a, p. 90; Rodriguez *et al.* 2005, p. 2). El Niño events are important triggers for regeneration of plants in semiarid ecosystems, particularly the dry forest of northwestern Peru (Holmgren *et al.* 2006a, p. 88; Lopez *et al.* 2006, p. 903; Rodríguez *et al.* 2005, pp. 2–3). During El Niño events, plant communities and barren lands are transformed into lush vegetation, as seeds germinate and grow more quickly in response to increased rainfall (Holmgren *et al.* 2006a, p. 88; Holmgren *et al.* 2006b, pp. 2–8; Rodríguez *et al.* 2005, pp. 1–6). Over the last 20 years, recruitment of *P. pallida* in northwestern Peru doubled during El Niño years, when compared to non-El Niño years (Holmgren *et al.* 2006b, p. 7). However, the abundant supply of vegetation encourages locals to expand goat breeding operations, which results in overgrazing by goats and further land degradation (Richter 2005, p. 26).

ENSO cycles increase the risk of fire because El Niño events are often followed by years of extremely dry weather (Block and Richter 2007, p. 1). Accumulated biomass dries and adds to the fuel load in the dry season (Block and Richter 2007, p. 1; Power *et al.* 2007, p. 898). Evidence suggests that the fire cycle in Peru has shortened, particularly coastal Peru and west of the Andes (Power *et al.* 2007, pp. 897–898), which can have broad ecological consequences (Block and Richter 2007,

p. 1; Power *et al.* 2007, p. 898). According to Block and Richter (2007, p. 1), *P. pallida* dry forest and *Capparis* spp. scrublands in northwestern Peru would likely experience a long-term change in plant species composition that favors aggressive, annual, nonnative weedy plant species (Richter 2005, p. 26). An accelerated fire cycle would further exacerbate changes in species composition that hinder long-lived perennial, native plant species, such as *Prosopis* species, upon which the Peruvian plantcutter relies.

ENSO cycles are ongoing, having occurred several times within the last decade (NWS 2009, p. 2). Evidence suggests that ENSO cycles have increased in periodicity and severity (Richter 2005, pp. 24–25; Timmermann 1999, p. 694), which will exacerbate the negative impacts of habitat destruction on a species. It is predicted that, by 2050, approximately 11 to 16 percent of existing land is likely to be unsuitable for this species due to climate change; and, by 2100, it is predicted that about 24 to 35 percent of the species' range is likely to be lost as a direct result of climate change (Jetz *et al.* 2007, p. 81).

Habitat destruction is often caused by a combination of human activities. In Lambayeque Region, a 1,500-ha (3,706-ac) section of remnant *P. pallida* dry forest is under continual threat from human activities, including conversion to agriculture, cutting for firewood and charcoal production, and grazing by goats. This area may support between 20 and 40 Peruvian plantcutters (BLI 2009f, p. 1; Walther 2004, p. 73). In the 1990s, a significant portion of this dry forest was converted to sugarcane fields (Engblom *in litt.* 1998, p. 1; Snow 2004, p. 69; Walther 2004, p. 73; Williams 2005, p. 2). Within Piura and Lambayeque Regions, threats to the dry forest habitat include conversion to agriculture, firewood and timber cutting, and grazing by goats (BLI 2009d, pp. 1–2). Habitat destruction and alteration also occurs within two protected areas where the Peruvian plantcutter occurs (in Lambayeque Region), Pómac Forest Historical Sanctuary (Flanagan *et al. in litt.* 2009, pp. 7–8; Andean Air Mail and Peruvian Times 2009, p. 1; Williams 2005, p. 1), and the Murales Forest (BLI 2000, p. 402; BLI 2009a, p. 3; Walther 2004, p. 73; Stattersfield *et al.* 2000, p. 402).

Experts consider the population of this range-restricted endemic species to be declining in close association with the continued habitat loss and degradation (BLI 2009a, pp. 1–2; BLI 2009g, pp. 1–3; BLI 2000, p. 401), and suggest that the effects are greater in dry forest habitat than in any other Neotropical habitat (Stotz *et al.* 1998, p. 51).

Summary of Factor A—Peruvian plantcutter

The Peruvian plantcutter is dependent upon intact *P. pallida* dry forest with low-hanging branches and high floristic diversity, and associated arid lowland scrub and riparian vegetation. *P. pallida* dry forest habitat, as well as arid lowland scrub and riparian shrub habitats, throughout the Peruvian plantcutter's range have been and continue to be altered and destroyed as a result of human activities, including conversion to agriculture; timber and firewood cutting and charcoal production; grazing of goats; and human encroachment. Extant *P. pallida* dry forest today consists of remnant, disjunct patches of woodlands, which are heavily disturbed and under continued threat of degradation by human activities. Observations suggest that this dry-forest–dependent species is able to occupy very small remnant patches of dry forest with low-hanging branches and floristic diversity, and is able to persist to some degree near developed lands. However, many of these sites are so small that they are below or approaching the lower threshold of the species' ecological requirements. This species has been extirpated from most of its historical sites due to loss or degradation of habitat. Additionally, many of the extant occupied sites are separated by great distances, which may lead to genetic isolation of the species.

The same activities that caused the historical decline in this species are ongoing today. These habitat-altering activities are compounded by unexpected climate fluctuations, especially for narrow endemics such as the Peruvian plantcutter. Excessive rains accompanied by El Niño events induce further habitat destruction, as people take advantage of better grazing and growing conditions. Destruction of the remaining *P. pallida* dry forest fragments in Peru continues to reduce the quantity, quality, distribution, and regeneration of remaining patches of dry forest. Human activities that degrade, alter, and destroy habitat are ongoing throughout the species' range, including within protected areas. Therefore, we find that destruction and modification of habitat threaten the continued existence of Peruvian plantcutter throughout its range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The best available information does not indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to any of the six bird species (the ash-breasted tit-tyrant, Junín grebe, Junín rail, Peruvian plantcutter, royal cinclodes, and the white-browed tit-spinetail) addressed in this final rule. With respect to the ash-breasted tit-tyrant and royal cinclodes, most areas where they occur are in very steep areas that are difficult to access. With respect to the Junín grebe, Fjeldså (1981, pp. 254–255) noted that local hunters were not interested in grebes as food because they have too little meat. No other information was located or provided during the proposed rule comment period regarding the overutilization of these six species. Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to any of these six species.

C. Disease or Predation

Ash-breasted tit-tyrant, Peruvian plantcutter, royal cinclodes, and the white-browed tit-spinetail

We are not aware of any scientific or commercial information that indicates disease or predation pose a threat to the following four species: Ash-breasted tit-tyrant, royal cinclodes, white-browed tit-spinetail, or Peruvian plantcutter. Disease and predation remain a concern for the management of each of these four species; however, the best available information does not indicate that the occurrence of disease or predation affecting these species rises to the level of threats that place any of these species at risk of extinction. Therefore, we do not find that disease or predation threaten the continued existence of any of these four species.

Junín grebe and Junín rail (Lake Junín)

Disease: Although no specific diseases have been identified for the Junín grebe and Junín rail, contamination of Lake Junín exposes these two species to mortality and a reduction in the overall fitness and health of these species. Water contamination affects the health of species inhabiting Lake Junín where mining activities occur (Shoobridge 2006, p. 3; Martin and McNee 1999, pp. 660–661). Agricultural runoff, organic matter, and wastewater have contaminated the entire lake with high concentrations of dissolved chemicals (ParksWatch 2011, pp. 2–3; ParksWatch

2006, pp. 5, 19, 20–21; Shoobridge 2006, p. 3; Fjeldså 2004, p. 124; Martin and McNee 1999, pp. 660–662). Environmental contaminants exceed current established thresholds for aquatic life (ParksWatch 2006, p. 20; Martin and McNee 1999, pp. 660–661) and have rendered the northern portion of the lake lifeless due to eutrophication (BLI 2008, p. 4; Shoobridge 2006, p. 3). Due to severe contamination, the sediments in the center of the lake are anoxic (containing no dissolved oxygen), and the lake's turbidity has increased (ParksWatch 2006, p. 20; Martin *et al.* 2001, p. 180). Chemical waste has damaged at least one third of the lake, severely affecting animal and plant populations in the area and completely eliminating vegetation from the northern portion of the lake (Shoobridge 2006, p. 3; ParksWatch 2006, pp. 20–21; Fjeldså 2004, p. 124; O'Donnel and Fjeldså 1997, p. 29).

As discussed under Factor A, lead, copper, and zinc mining residues, agricultural runoff, organic matter, and wastewater are discharged directly into Lake Junín (Shoobridge 2006, p. 3; ParksWatch 2006, pp. 5, 19; Martin and McNee 1999, pp. 660–661; Fjeldså 1981, p. 255). High concentrations of environmental contaminants (including ammonium, copper, iron oxide, lead, mercury, nitrate, and zinc) have been detected throughout the lake (ParksWatch 2006, pp. 20–21; Fjeldså 2004, p. 124; Martin and McNee 1999, pp. 660–662; Fjeldså 1981, pp. 255–256) and exceed established thresholds for aquatic life (ParksWatch 2006, p. 20; Martin and McNee 1999, pp. 660–661).

High concentrations of suspended particulate matter increase the turbidity of the water, making it less penetrable to sunlight and results in die-off of aquatic plants and algae (ParksWatch 2006, p. 20). The northern portion of the lake is completely devoid of vegetation (ParksWatch 2006, pp. 20–21; Fjeldså 2004, p. 124), and the giant bulrush marshlands, which once existed in great expanses around the entire perimeter of the lake and upon which the Junín grebe relies for nesting and foraging habitat, have virtually disappeared.

During years of heavy rainfall, the lake is filled; however, the lakeshore becomes polluted with toxic acidic gray sediment that has caused large-scale mortality of cattle (approximately 2,000 died in 1994) and birds, apparently due to lead poisoning (O'Donnel and Fjeldså 1997, p. 30). Lead poisoning from the presence of mining waste is a common cause of mortality in water birds, and is medically described as an intoxication resulting from absorption of hazardous levels of lead into body tissues (Friend and Franson 1999, p. 317).

Water contamination has directly affected the health of the Junín grebe population. As predators of aquatic organisms, the Junín grebe occupies a mid-tertiary level position in the food chain and is prone to bioaccumulation of pesticides, heavy metals, and other contaminants that are absorbed or ingested by its prey (Fjeldså 2004, p. 123; Fjeldså 1981, pp. 255–256). Species such as the Junín grebe, which inhabit high trophic levels, are strictly dependent upon the functioning of a multitude of ecosystem processes. The loss or absence of species at lower trophic levels can result in cascading ecosystem effects, causing imbalances in the food web at all higher trophic levels (The University of the Western Cape 2009, p. 1). Analysis of feathers and bone tissue of Junín grebes and of pupfish, the species' primary prey, indicate that both the grebe and its prey contain elevated lead levels (Fjeldså 1981, pp. 255–256).

Drought conditions exacerbate the effects of water contamination and bioaccumulation of contaminants in aquatic species and species at higher trophic levels (Fjeldså 2004, p. 123; Demayo *et al.* 1982, as cited in Eisler 1988, p. 5). From 1989 to 1992, an extensive drought occurred in the Lake Junín area. During that time, many dead Junín grebes and other water birds were found along the edges of the lakeshore (Valqui and Barrio *in litt.* 1992, as cited in Collar *et al.* 1992, p. 45, 190). In 1992, one of the driest years in decades, up to 10 dead grebes per month were reported around the lake (Valqui and Barrio *in litt.* 1992, as cited in Collar *et al.* 1992, p. 45). Experts consider the cause of death to have been either heavy metal contamination, which increased in concentration as water levels decreased (Valqui and Barrio *in litt.* 1992, as cited in Collar *et al.* 1992, p. 45), or reduced prey availability (Fjeldså 2004, p. 124). Reduced prey availability is exacerbated by manmade activities that are reducing the water levels of the lake, increasing competition among sympatric grebe species (different grebe species that occupy the same range) and decreasing the marshlands that provide primary spawning habitat for the pupfish.

Persistent exposure to contaminants can contribute to a decline in fitness for long-lived, mid-trophic level species. Contaminants may be inherited by offspring and can impact embryonic development, juvenile health, or viability (Rose 2008, p. 624). The excessive contaminant load in Lake Junín could also allow opportunistic bacterial and viral infections to overcome individuals. According to Fjeldså (1981, p. 254), the Junín grebe bears a heavy infestation of stomach nematodes (parasitic roundworms), especially as compared to other grebe species. Stomach contents of Junín grebes that have been examined had an average of 16.7 nematodes, compared with no nematodes in silver grebes (*P. occipitalis)* and 1.6 nematodes in white-tufted grebes *(Rollandia rolland).* Fjeldså (1981, p. 254) postulated that the higher nematode infestation in Junín grebes may be an indicator of poor health.

Predation—Junín grebe. Predators around Lake Junín include the Andean fox *(Pseudalopex culpaues),* the long-tailed weasel *(Mustela frenata),* Pampas cat *(Onicifelis colocolo),* and hog-nosed skunk *(Conepatus chinga)* (ParksWatch 2009, p. 4). However, nest sites of the Junín grebe are generally inaccessible to mammalian predators (Fjeldså 1981, p. 254). The only raptor likely to take a grebe on Lake Junín is the Cinereus harrier *(Circus cinereus),* which primarily feeds in white-tufted grebe habitats. Moorhens *(Gallinula chloropus),* which also inhabit the lake (ParksWatch 2009, p. 3; Tello 2007, p. 2), may steal Junín grebe eggs for food (Fjeldså 1981, p. 254). However, there is no direct evidence of predation upon the Junín grebe or indication that predation is a concern.

Predation—Junín rail. Junín rails are preyed upon by pampas cats (BLI 2009b, p 2). Under normal conditions, water levels are lower in the dry season, and the marshlands can become partially or completely dry (BLI 2009b, p. 1; ParksWatch 2009, p. 2), reducing protective cover and allowing predators to more easily locate the rail. When the floodgates of the Upumayo Dam are opened during the dry season (June to November) (BLI 2009b, p. 1; ParksWatch 2009, p. 2), drawdown has led to complete desiccation of the marshlands by the end of the dry season (Fjeldså 2004, p. 123). The ground-nesting Junín rail breeds near the end of the dry season, in September and October, and builds its nests in the dense vegetative cover of the rushes on the lake perimeter (BLI 2009b, p. 2). Water drawdown and periods of drought increases the bird's vulnerability to predation because nesting grounds become exposed and larger areas of the marsh are accessible to predators (ParksWatch 2006, p. 23). Predation increases the risk of extirpation due to the species' already small population size. In addition, species that inhabit a small geographic range, occur at low density, occupy a high trophic level, and exhibit low reproductive rates tend

to have a higher risk of extinction than species that are not limited by the same risk factors (Purvis *et al.* 2000, p. 1949) (Factor E).

Summary of Factor C—Junín grebe and Junín rail

Disease. The best available information indicates that environmental contaminants (Factor A) in Lake Junín likely have negative consequences on the health of both the Junín grebe and Junín rail. The species' trophic level also exposes them to accumulation of toxins in the tissue of prey species. Therefore, we find that disease due to contamination is a threat to the continued existence of both the Junín grebe and Junín rail.

Predation. There is no available evidence to indicate that predation is causing declines in Junín grebe populations or otherwise contributing to the species' risk of extinction. Therefore, we do not find that predation is a threat to the Junín grebe.

Predation by the pampas cat results in the direct removal of Junín rails from the population and can remove potentially reproductive adults from the breeding pool. The species' habitat becomes more accessible to predators during droughts and water drawdowns due to ongoing habitat destruction (through reduced water levels and contamination), which continues to degrade the quality of habitat available to the Junín rail. Predation renders the species particularly vulnerable to local extirpation due to its small population size. Therefore, we find that predation, exacerbated by ongoing habitat destruction, is a threat to the continued existence of the Junín rail throughout its range.

D. Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms affecting each of these six species could potentially fall under categories such as wildlife management, parks management, or forestry management. We are primarily evaluating these regulatory mechanisms in terms of nationally protected parks because this is where these species generally occur. The FAO conducted a review of forest policies and laws in 2010, and a summary for Peru and Bolivia is in table 1. The study found that, although Peru does not have a national forest policy, it does have both a national forest program and law in place. Bolivia has a national forest policy, national forest program, and law program in place. No forest laws at the subnational level (such as jurisdictions equivalent to states in the United States) exist in these countries. FAO reported that Peru and Bolivia reported a significant loss of primary forests; this loss peaked in the period 2000–2005 in Peru and increased in Bolivia in the last decade compared with the 1990s (p. 56). FAO also reported that, at a regional level, South America suffered the largest net loss of forests between 2000 and 2010; at a rate of approximately 4.0 million ha (9.9 million ac) per year (p. xvi).

TABLE 1—SUMMARY OF FOREST POLICIES AND LAWS IN BOLIVIA AND PERU

[Adapted From FAO Global Forest Resource Assessment 2010, p. 303.]

Country	National		National forest program			Forest law national		
	Exists	Year	Exists	Year	Status	National—type	Year	Sub-national exists
Bolivia	Yes	2008	Yes	2008	In implementation	Specific forest law	1996	No
Peru	No		Yes	2004	In implementation	Specific forest law	2000	No

Ash-breasted tit-tyrant, royal cinclodes, and the white-browed tit-spinetail (Polylepis habitat)

The following analysis of regulatory mechanisms is discussed on a country-by-country basis, beginning with Peru.

Peru: The ash-breasted tit-tyrant and the white-browed tit-spinetail are considered endangered, and the royal cinclodes is considered critically endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276854, 276855). This Decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation.

The Peruvian national protected area system includes several categories of habitat protection. Habitat may be designated as any of the following:

(1) Parque Nacional (National Park, an area managed mainly for ecosystem conservation and recreation);

(2) Santuario (Sanctuary, for the preservation of sites of notable natural or historical importance);

(3) Reserva Nacional (National Reserve, for sustainable extraction of certain biological resources);

(4) Bosque de Protección (Protection Forest, to safeguard soils and forests, especially for watershed conservation);

(5) Zona Reservada (Reserved Zone, for temporary protection while further study is under way to determine their importance);

(6) Bosque Nacional (National Forest, to be managed for utilization);

(7) Reserva Comunal (Communal Reserve, for local area use and management, with national oversight); and

(8) Cotos de Caza (Hunting Reserve, for local use and management, with national oversight) (BLI 2008, p. 1; Rodríguez and Young 2000, p. 330).

National reserves, national forests, communal reserves, and hunting reserves are managed for the sustainable use of resources (IUCN 1994, p. 2). The designations of National Parks, Sanctuaries, and Protection Forests are established by supreme decree that supersedes all other legal claim to the land and, thus, these areas tend to provide more habitat protection than other designations. All other protected areas are established by supreme resolution, which is viewed as a less powerful form of protection (Rodríguez and Young 2000, p. 330).

Protected areas have been established through regulation in at least three sites occupied by the ash-breasted tit-tyrant and the white-browed tit-spinetail in Peru: Parque Nacional Huascarán (Ancash), and Santuario Histórico Machu Picchu (Cusco); and Zona Reservada de la Cordillera Huayhuash (spanning Ancash, Huánuco, and Lima) (BLI 2009i, p. 1; BLI 2009l, p. 1; BLI 2009n, p. 1; Barrio 2005, p. 563). The royal cinclodes is known to occur in the Santuario Histórico Machu Picchu (Cusco, Peru) (BLI 2009h, p. 4). Resources within Santuario Histórico Machu Picchu are managed for conservation (Rodríguez and Young 2000, p. 330). However, activities such as habitat destruction and alteration, including burning, cutting, and grazing occur within the sanctuary and prevent

regeneration of the woodlands (BLI 2009c, p. 3; Engblom *et al.* 2002, p. 58). Abra Malaga and Mantanay are now established as community reserves (Lloyd 2010, pers. comm.). These community reserves may be a more effective way of protecting area than other categories (e.g., national park, reserved zone), because local community-based projects greatly assist in resolving land tenure problems between local communities.

Habitat destruction and alteration, including burning, cutting, and grazing, are ongoing within Parque Nacional Huascarán and Santuario Histórico Machu Picchu (BLI 2009l, p. 4; BLI 2009n, p. 2; Engblom *et al.* 2002, p. 58). Reserved zones are intended to be protected pending further study (Rodríguez and Young 2000, p. 330). Burning for habitat conversion and maintenance of pastures for grazing and increasing ecotourism are ongoing within Zona Reservada de la Cordillera Huayhuash (Barrio 2005, p. 564). Although these three species occur within protected areas in Peru, these protected areas do not adequately protect the species. Therefore, the occurrence of these three species within protected areas in Peru does not protect these species, nor does it mitigate the threats to the species from ongoing habitat loss and concomitant population decline.

Bolivia: In Bolivia, several activities are occurring that affect the royal cinclodes and ash-breasted tit-tyrant. They occur within several protected areas in the Department of La Paz, Bolivia: Parque Nacional y Área Natural de Manejo Integrado Madidi, Parque Nacional y Área Natural de Manejo Integrado Cotapata, and the colocated protected areas of Reserva Nacional de Fauna de Apolobamba, Área Natural de Manejo Integrado de Apolobamba, and Reserva de la Biosfera de Apolobamba (BLI 2009a, p. 1; BLI 2009b, p. 1; Auza and Hennessey 2005, p. 81). Although national parks are intended to be strictly protected, the two parks in which these species occur are also designated as areas of integrated management, which are managed for biological conservation balanced with the sustainable development of the local human population (Supreme Decree No. 24,781 1997, p. 3). Within the Parque Nacional y Área Natural de Manejo Integrado Madidi, habitat destruction is caused by timber harvest used for construction, wood collection for firewood, and burning (that often goes out of control) to maintain pastures (BLI 2009a, p. 2; WCMC 1998a, p. 1). In addition, one of the most transited highways in the country is located a short distance from the Parque Nacional y Área Natural de Manejo Integrado Cotapata, which may add to the habitat degradation in this area. Grazing also occurs within the protected area (BLI 2009b, p. 2; BLI 2009c, p. 2). Within the Apolobamba protected areas, uncontrolled clearing, extensive agriculture, grazing, and tourism are ongoing (BLI 2009d, p. 5; Auza and Hennessey 2005, p. 81).

Commercial logging has occurred within Parque Nacional y Área Natural de Manejo Integrado Madidi (BLI 2009a, p. 2; WCMC 1998a, p. 1). Grazing and firewood extraction are also ongoing within Parque Nacional y Área Natural de Manejo Integrado Cotapata (BLI 2009b, p. 2; BLI 2009c, p. 2). Uncontrolled clearing, extensive agriculture, and grazing are ongoing within the Apolobamba protected areas (BLI 2009e, p. 5; Auza and Hennessey 2005, p. 81). Habitat degradation and destruction from grazing, forest fires, and timber extraction are ongoing in other protected areas such as Tunari National Park (Department of Cochabamba, Bolivia), where suitable habitat exists for these two species (De la Vie 2004, p. 7).

In Bolivia, habitat is protected either on the national or departmental level. Recently, Bolivia passed the "Law of Rights of Mother Earth" to add strength to its existing environmental protection laws. This law has the objective of recognizing the rights of the planet (Government of Bolivia, 2010). Protected habitat in Bolivia has the following designations:

(1) Parque (Park, for strict and permanent protection of representative ecosystems and provincial habitats, as well as plant and animal resources, along with the geographical, scenic and natural landscapes that contain them);

(2) Santuario (Sanctuary, for the strict and permanent protection of sites that house endemic plants and animals that are threatened or in danger of extinction);

(3) Monumento Natural (Natural Monument, to preserve areas such as those with distinctive natural landscapes or geologic formations, and to conserve the biological diversity contained therein);

(4) Reserva de Vida Silvestre (Wildlife Reserve, for protection, management, sustainable use and monitoring of wildlife);

(5) Area Natural de Manejo Integrado (Natural Area of Integrated Management, where conservation of biological diversity is balanced with sustainable development of the local population); and

(6) Reserva Natural de Inmovilización (Immobilized Natural Reserve, a temporary (5-year) designation for an area that requires further research before any official designations can be made and during which time no natural resource concessions can be made within the area) (Supreme Decree No. 24,781 1997, p. 3).

Within parks, sanctuaries and natural monuments, extraction or consumption of all resources are prohibited, except for scientific research, ecotourism, environmental education, and authorized subsistence activities of original towns. National protected areas are under the management of the national government, while departmental protected areas are managed at the department level (eLAW 2003, p. 3; Supreme Decree No. 24,781 1997, p. 3). Despite these protections, habitat degradation continues to occur even in areas that are designated as protected.

Bolivia's 1975 Law on Wildlife, National Parks, Hunting and Fishing (Decree Law No. 12,301 1975, pp. 1–34) has the fundamental objective of protecting the country's natural resources (ELAW 2003, p. 2). This law governs the protection, management, use, transportation, and selling of wildlife and their products; protection of endangered species; habitat conservation of fauna and flora; and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries, tending to the preservation, promotion, and rational use of these resources (ELAW 2003, p. 2; Decree Law No. 12,301 1975, pp. 1–34). Although this law designates national protection for all wildlife, there is little information as to the actual protections this confers to these two species or their habitat. Law No. 12,301 also placed into public trust all national parks, reserves, refuges, and wildlife sanctuaries. Bolivia passed an overarching environmental law in 1992 (Law No. 1,333 1992), with the intent of protecting and conserving the environment and natural resources. However, there is no specific legislation to implement these laws (eLAW 2003, p. 1).

A national strategy for conservation of *Polylepis* forest has been developed, and will be used in combination with current research to elaborate a specific plan for the conservation of these two species and their habitat (Gomez 2010, p. 1). In an effort to reverse the loss of *Polylepis* forest, the Peruvian Government has endorsed the creation of several new conservation areas that should have significant ramifications in the ongoing efforts to protect habitat for endangered bird species in the country (American Bird Conservancy (ABC)

2010, unpaginated). Three new community-owned, conservation areas encompassing 3,415 ha (8,438 ac) to protect *Polylepis* forest in the Vilcanota Mountains of southeastern Peru, near Cusco have been established. ECOAN and ABC are collaboratively working with the local communities to protect and restore these conservation areas: Choquechaca, Mantanay, and Sele Tecse Ayllu Lares in the Vilcanota Mountains (ABC 2010). A goal of planting 8,000 *Polylepis* trees (5,000 at Abra Malaga and 3,000 at Cancha) was reached (ABC undated, p. 1). These efforts should have a positive impact on the three *Polylepis*-dependent species in this rule: The ash-breasted tit-tyrant, royal cinclodes, and white-browed tit-spinetail (MacGregor-Fors et al. 2010, p. 1,492; Lloyd and Marsden 2009, pp. 7–8). Despite these efforts, they do not adequately protect these species, nor do they sufficiently mitigate the threats to these species from ongoing habitat loss and concomitant population decline. Given the ongoing habitat destruction throughout these two species' ranges in Bolivia, the laws and protections in place do not protect these species, nor do they mitigate the threats to the species from ongoing habitat loss (Factor A) and concomitant population decline (Factor E).

Summary of Factor D—Polylepis habitat

Peru and Bolivia have enacted various laws and regulatory mechanisms to protect and manage wildlife and their habitats. As discussed under Factor A, these three species require dense *Polylepis* habitat, which has been reduced by an estimated 98 percent in Peru and Bolivia. The remaining habitat is fragmented and degraded. Habitat throughout the species' range has been and continues to be altered as a result of human activities, including clearcutting and burning for agriculture, grazing lands, and industrialization; extractive activities, including firewood, timber, and minerals; and human encroachment and concomitant increased pressure on natural resources. A strategy for conservation of *Polylepis* forest has been developed, and will be used in combination with current research to develop a plan for the conservation of these species and their habitat (BLI 2012; Gomez 2010, p. 1). NGOs are conducting reforestation efforts of *Polylepis* in some areas of Peru, but it will take some time for these saplings to grow and create suitable habitat. Despite the laws in place in Peru and Bolivia, destructive activities are ongoing within protected areas and in these species' habitat, indicating that the laws governing wildlife and habitat protection in both countries are either inadequate or inadequately enforced to protect the species or to mitigate ongoing habitat loss (Factor A) and population declines (Factor E). Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the continued existence of these three species throughout their range.

Junín grebe and Junín rail—Lake Junín

The Junín grebe is listed as critically endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276853). The Junín rail is listed as endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276855).

These two species occur wholly within one protected area: The Junín National Reserve (Junín, Peru) (BLI 2009b, pp. 1–2). The Junín National Reserve has an area of 53,000 ha (133,437 ac), bordering Lake Junín and its adjacent territories (Wege and Long 1995, p. 264). In Peru, national reserves are created in part for the sustainable extraction of certain biological resources (BLI 2008, p. 1; Rodríguez and Young 2000, p. 330). Established in 1974, through Supreme Decree No. 0750–74–AG, the stated objectives of the Junín National Reserve include: Integrated conservation of the local ecosystem, its associated flora and wildlife; preservation of the scenic beauty of the lake; and support of socioeconomic development in the area through the sustainable use of its renewable natural resources (BLI 2009a, p. 2; Hirshfeld 2007, p. 107). Most of the lake shore is designated a *direct use zone*, which allows fishing, grazing, and other educational, research, and recreational activities (ParksWatch 2006, p. 12). Although designation of this reserve has heightened awareness of the ecological problems at Lake Junín (BLI 2009c, p. 1), it has not reduced or eliminated the primary threats to these two species: Water fluctuations and contamination (Factor A), contamination resulting in poor health (Factor C), and small population size (Factor E). Therefore, the existence of this species within a protected area has not reduced or mitigated the threats to the species.

Ramsar. The Junín National Reserve was designated a Ramsar site under the Convention on Wetlands of International Importance (Ramsar Convention) in 1997 (BLI 2009a, p. 2; Hirshfeld 2007, p. 107; INRENA 1996, pp. 1–14). The Ramsar Convention, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 159 Contracting Parties to the Convention, with 1,874 wetland sites, totaling more than 185 million ha (457 million ac), designated for inclusion in the Ramsar List of Wetlands of International Importance (Ramsar 2009, p. 1). Peru acceded to Ramsar in 1992. As of 2009, Peru had 13 sites on the Ramsar list, comprising 6.8 million ha (16.8 million ac) (Ramsar 2009, p. 5). In reviewing five Ramsar sites, experts noted that Ramsar designation may provide nominal protection (protection in name only) by increasing both international awareness of a site's ecological value and stakeholder involvement in conservation (Jellison *et al.* 2004, pp. 1, 4, 19). However, activities that negatively impact these two species within this Ramsar wetland include livestock grazing, severe water fluctuations, and contamination resulting in poor health. These activities that negatively impact both species are ongoing throughout this wetland. Therefore, the Ramsar designation has not mitigated the impact of threats on the Junín grebe or Junín rail.

In 2002, the Peruvian Government passed an emergency law to protect Lake Junín. This law makes provisions for the cleanup of Lake Junín, and placed greater restrictions on extraction of water for hydropower and mining activities (Fjeldså *in litt.* 2003, as cited in BLI 2007, p. 3). However, this law has not been effectively implemented, and conditions around the lake may even have worsened after passage of this law (BLI 2009c, p. 1). The Ministry of Energy and Mining has implemented a series of Environmental Mitigation Programs (PAMAs) to combat mine waste pollution in the Junín National Reserve (ParksWatch 2009 p. 3). The PAMAs were scheduled to have been completed by 2002, but extensions were granted, indicating that many of the mines currently in operation are still functioning without a valid PAMA. Reductions in pollution are reported; some mining companies have begun to use drainage fields and recycle residual water. However, analysis of existing PAMAs indicate that they do not address specific responsibilities for mining waste discharged into the San Juan River and delta, nor do they address deposition of heavy metal-laced sediments in Lake Junín (ParksWatch 2009, p. 3; ParksWatch 2006, p. 21). Recent information indicates that mining waste contamination in the lake continues to be a source of pollution (Lebbin et al 2010, p. 382; ParksWatch

2006, pp. 20–21; Fjeldså 2004, p. 124). Therefore, neither this law nor other protections in place are effective at mitigating the threat of habitat degradation and health issues associated with contamination and small population size of either species.

Summary of Factor D—Junín grebe and Junín rail

Peru has enacted various laws and regulatory mechanisms for the protection and management of wildlife and their habitats. The entire populations of both species occur within one protected area. As discussed under Factor A, the distribution, breeding success and recruitment, and food availability for both species on Lake Junín has been curtailed, and are negatively impacted due to habitat destruction that is caused by artificial water fluctuations and water contamination from human activities. These species are endemic to this lake, they have populations of between 100 and less than a few thousand individuals, and their populations have declined in the recent past. These habitat-altering activities are ongoing throughout these two species' ranges. Thus, despite the species' status and presence within a designated protected area, laws governing wildlife and habitat protection in Peru are inadequately enforced or ineffective at protecting the species or mitigating ongoing habitat degradation, impacts from contaminants, and concomitant population declines, and in the case of the Junín rail, predation. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the threats to the continued existence of the Junín grebe and Junín rail throughout their ranges.

Peruvian plantcutter

The Peruvian plantcutter is considered endangered by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276854). This Decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation.

The Peruvian plantcutter occurs within two nationally protected areas, the Pómac Forest Historical Sanctuary and the Murales Forest (both in the Lambayeque Region on the northwestern coast of Peru). The Pómac Forest Historical Sanctuary supports an estimated 20 to 60 Peruvian plantcutters (BLI 2009a, p. 2; BLI 2009e, p. 1; Walther 2004, p. 73). Resources within the Pómac Forest Historical Sanctuary are managed for various purposes including the preservation of the archeological site, *P. pallida* dry forest, and wildlife species. However, habitat destruction and alteration, including illegal forest clearing for farming, timber and firewood cutting, and grazing, continually threaten the sanctuary (ParskWatch 2005; Williams 2005, p. 1). For 8 years, more than 250 families illegally occupied and farmed land in the Sanctuary. During the illegal occupancy, the inhabitants logged 2,000 ha (4,942 ac) of *P. pallida* trees for firewood and burned many other trees for charcoal production (Andean Air Mail and Peruvian Times 2009, p. 1). The logged forest was subsequently converted to agricultural crops, while remaining forest habitat was continually degraded by firewood cutting, charcoal production, and grazing of goats (Flanagan *et al. in litt.* 2009, p. 8). In January 2009, the government forcibly removed the inhabitants, but it is too soon to determine the effect that habitat destruction has had on the suitability of the habitat for the Peruvian plantcutter. There is insufficient information to conclude that recent efforts to stop the illegal human occupancy of the area will have a positive impact on the species or remaining habitat within the protected area. Therefore, any protections afforded by this sanctuary have not mitigated the threats to the species from ongoing habitat loss and associated population decline.

The Murales Forest is a designated archeological reserved zone (BLI 2009a, p. 3; Stattersfield *et al.* 2000, p. 402; BLI 2000, p. 401) and contains a declining population of Peruvian plantcutters. According to Peruvian law, designation as a reserved zone allows for temporary protection while further study is under way to determine the area's importance (BLI 2008, p. 1; Rodríguez and Young 2000, p. 330). Although strict monitoring has protected some habitat (BLI 2009a, p. 3), the actual dry forest is not protected. In 1999, land rights to sections of the forest were sold for agricultural conversion, and government intervention has been necessary to prevent further sales of land for conversion to agriculture (BLI 2009a, p. 3). In 1999, Murales Forest and adjacent areas contained approximately 494 ha (1,221 ac) of habitat, and reportedly supported 140 Peruvian plantcutters (BLI 2000, p. 402). In 2004, the population was estimated to be 20 to 40 individuals (Walther 2004, p. 73). The decline in population indicates that threats to the species from ongoing habitat loss and associated population decline have not been mitigated.

Other incidences of illegal activity that occur throughout the species' range also impact the Peruvian plantcutter. Ongoing firewood cutting and charcoal production degrades the small amount of remaining dry forest habitat within the species' range (BLI 2009d, pp. 1–2; Rodriguez *et al.* 2007, p. 269; Williams 2005, p. 1; Snow 2004, p. 69; Ridgely and Tudor 1994, p. 734). In Talara Province (in the Piura Region, north of the Lambayeque Region), a recent increase in the illegal extraction of crude oil has generated further demand for *P. pallida* firewood, which is used as fuel to heat-distill the oil. According to Flanagan *et al.* (*in litt.* 2009, p. 8), enforcement to combat this illegal activity is difficult. This further illustrates how existing laws are ineffective at mitigating the ongoing threat of habitat destruction.

Summary of Factor D—Peruvian plantcutter

Peru has enacted various laws and regulatory mechanisms to protect and manage wildlife and their habitats. The Peruvian plantcutter is endangered under Peruvian law and occurs within two protected areas in Peru. As discussed under Factor A, the Peruvian plantcutter inhabits *P. pallida* dry forest. This habitat has been drastically reduced, and remaining habitat comprises small remnant patches of dry forest that are separated by great distances. Habitat throughout the species' range has been and continues to be destroyed and altered as a result of human activities, primarily conversion to agriculture, and continual degradation by timber and firewood harvest and charcoal production, and grazing by goats. These activities are ongoing, including within protected areas and despite the species' endangered status. This indicates that the laws governing wildlife and habitat protection in Peru are either inadequate or inadequately enforced to protect the species or to mitigate ongoing habitat loss and population declines. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the continued existence of the Peruvian plantcutter throughout its range.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species' Small, Declining Population

An additional factor that affects the continued existence of these six species is their small, declining population sizes. Small, declining population sizes, in concert with other threats, and the lack of connectivity based on habitat fragmentation leads to an increased risk of extinction (Harris and Pimm 2008, p. 169). All six species have limited and increasingly fragmented geographic

ranges in addition to small population sizes (see Table 2). One of IUCN and BirdLife's criteria to determine if a species is categorized as threatened is a breeding range of under 20,000 km². In most cases, their existing populations are extremely localized, and sometimes geographically isolated from one another, leaving them vulnerable to localized extinctions from habitat modification and destruction, natural catastrophic changes to their habitat (e.g., flood scour, drought), and other stochastic disturbances.

TABLE 2—POPULATION ESTIMATES FOR SIX BIRD SPECIES FOUND IN BOLIVIA AND PERU

Peruvian species	Population estimate	Estimate of population decline in past 10 years
ash-breasted tit-tyrant *(Anairetes alpinus)*, also native to Bolivia	780	between 10 and 19 percent.
royal cinclodes *(Cinclodes aricomae)*, also native to Bolivia	50–250	between 30 and 49 percent.
white-browed tit-spinetail *(Leptasthenura xenothorax)*	500–1,500	between 10 and 19 percent.
Junín grebe *(Podiceps taczanowskii)*	100–300	14 percent.
Junín rail *(Laterallus tuerosi)*	1,000–2,499	between 10 and 19 percent.
Peruvian plantcutter *(Phytotoma raimondii)*	500–1,000	between 1 and 9 percent.

A small, declining population size renders a species vulnerable to any of several risks. Extinction risk is heightened in small, isolated, declining populations because they are more susceptible to environmental fluctuations and demographic shifts such as reduced reproductive success of individuals and chance disequilibrium of sex ratios (Harris and Pimm 2008, p. 163; Pimm *et al.* 1988, pp. 757, 773–775; Shaffer 1981, p. 131). Additionally, the increasing isolation of populations due to ongoing habitat loss and degradation (fragmentation), unless the population is managed, greatly affects dispersal and other movement patterns of individuals between subpopulations.

1. *Ash-breasted tit-tyrant.* The ash-breasted tit-tyrant is considered to have a very small population of less than 1,000 individuals (see table 2; BLI 2009o, p. 1). Its population declined at a rate between 10 and 19 percent in the past 10 years, and this decline is expected to continue in close association with continued habitat loss and degradation (BLI 2009o, p. 1). The ash-breasted tit-tyrant is currently confined to restricted and severely fragmented forest patches in the high Andes of Peru and Bolivia, where it is estimated that approximately only 2 percent of the dense woodlands preferred by the species remains (Fjeldså 2002a, p. 114; Smith 1971, p. 269).

2. *Junín grebe.* The current population of the Junín grebe is estimated to be 100–300 individuals, however, only a small number of adults remain (BLI 2009b, pp. 1, 3; BLI 2008, p. 1). The species is restricted to the southern portion of Lake Junín (BLI 2009b, p. 1; Gill and Storer, pers. comm. As cited in Fjeldså 2004, p. 200; Fjeldså 1981, p. 254). The Junín grebe underwent a severe population decline in the latter half of the 20th century, and experienced extreme population fluctuations (Fjeldså 1981, p. 254). For example, in 1993, the population size declined to below 50 individuals, of which fewer than half were breeding adults (BLI 2009b, p. 2; BLI 2008, p. 3). Even if the population estimate of 100–300 individuals is correct, the number of mature individuals is likely to be far smaller, perhaps only half (Fjeldså *in litt.* 2003, as cited in BLI 2009b, p. 2). Therefore, 100–300 individuals likely overestimates the species' effective population size (the number of breeding individuals that contribute to the next generation). The population has declined by at least 14 percent in the last 10 years and is expected to continue to decline, as a result of declining water quality and extreme water level fluctuations (BLI 2009b, pp. 1, 4, 6–7).

3. *Junín rail.* BLI placed the Junín rail in the population category of between 1,000 and 2,499 individuals (BLI 2009b, p. 2), and considers the population to be likely very small and presumably declining (BLI 2009b, p. 1; BLI 2000, p. 170). The Junín rail is known from two localities (Ondores and Pari) on the southwestern shore of Lake Junín in central Peru. The population has declined at a rate between 10 and 19 percent in the past 10 years, and this decline is expected to continue as a result of the declining quality of habitat within its small, restricted range (BLI 2009b, pp. 4–5).

4. *Peruvian plantcutter.* BLI placed the Peruvian plantcutter in the population category of between 500 and 1,000 individuals (BLI 2009g, p. 1). The Peruvian plantcutter has experienced a population decline of between 1 and 9 percent in the past 10 years due to habitat loss. This decline is expected to continue in close association with continued habitat loss and degradation. There is insufficient information on similar species (i.e., the other South American plantcutters) to understand whether the Peruvian plantcutter's population size is small relative to other plantcutters. However, there are several indications that this number of individuals represents a small, declining population.

First, the Peruvian plantcutter's population size—which is defined by BLI as the total number of mature individuals—is not the same as the effective population size—the number of individuals that actually contribute to the next generation (Shaffer 1981, pp. 132–133; Soulé 1980, pp. 160–162). Not all individuals in a population will contribute to reproduction each year. Therefore, the estimated population size for the Peruvian plantcutter may be an overestimate of the species' effective population size. Moreover, the population structure and extent of interbreeding are unknown. If the species does not breed as a single population, its effective population size would be further reduced.

Second, the extant Peruvian plantcutter population occurs primarily in two disjunct subpopulations—Talara and Pómac Forest Historical Sanctuary (BLI 2009g, pp. 1–2; Walther 2004, p. 73)—and in several smaller sites (Flanagan *et al. in litt.* 2009, pp. 2–7; Williams 2005, p. 1; Walther 2004, p. 73; Flanagan and More 2003, pp. 5–9). Talara and Pómac Forest Historical Sanctuary are approximately 257 km (160 mi) apart (FCC (Federal Communications Commission—Audio Division 2009). Its habitat is heavily degraded and localities are small, severely fragmented, and widely separated (Flanagan *et al. in litt.* 2009, pp. 1–9; Bridgewater *et al.* 2003, p. 132; Ridgely and Tudor 1994, p. 18). It is possible that the distance between patches of suitable habitat is too far to support interbreeding between localities, so that the extant occurrences of this species would function as genetically isolated subpopulations.

5. *Royal cinclodes.* Based on recent observations in Peru and Bolivia, the total population of royal cinclodes is between 50 and 250 mature individuals (BLI 2011e; Aucca-Chutas 2007, pp. 4, 8; Gómez *in litt.* 2007, p. 1). The royal cinclodes has undergone a population decline between 30 and 49 percent in the past 10 years in close association with the continued loss and degradation of the *Polylepis* forest (BLI 2009i, p. 6). It is an intrinsically low-density species. The exacerbated small population size, lack of connectivity (isolation), and small areas of remaining habitat which are localized and highly fragmented, all affect the continued existence of this species (Lloyd 2010, pers. comm.). Engblom *et al.* (2002, p. 57) noted that the royal cinclodes may descend from the mountains to forage in the valleys during periods of snow cover at the higher altitudes. Thus, interbreeding may occur at least among localities with shared valleys, but there is insufficient information to determine that the species breeds as a single population. It is currently restricted to high-elevation, moist, moss-laden patches of semihumid woodlands in Peru and Bolivia (BLI 2009i, p. 6; Fjeldså and Kessler 1996, as cited in Fjeldså 2002a, p. 113). Remaining *Polylepis* woodlands are highly fragmented and degraded, and it is estimated that approximately only 2 percent of the dense woodlands preferred by the species remain (del Hoyo *et al.* 2003, p. 253; Engblom *et al.* 2002, p. 57).

6. *White-browed tit-spinetail.* BLI has placed the white-browed tit-spinetail in the population category of between 500 and 1,500 individuals (BLI 2009d, pp. 1, 5). The white-browed tit-spinetail is currently confined to high-elevation, semihumid patches of forest in the Andes of Peru, and its population has declined at a rate between 10 and 19 percent in the past 10 years, in close association with the continued loss and degradation of the *Polylepis* forest (BLI 2009d, pp. 5–6).

Summary of Factor E

Based on their small, declining population size and fragmented distribution, combined with the threat of disease (Junín rail and Junín grebe), we have determined that all six species addressed in this final rule are vulnerable to the threat of adverse natural events that exacerbate human activities (e.g., deforestation, habitat alteration, and infrastructure development) that, alone or in combination, destroy individuals and their habitat. The stochastic risks associated with small, declining populations are exacerbated by ongoing human activities that continue to curtail the species' habitat throughout their range. We expect that the risks associated with small, declining populations will continue to impact these six species and may accelerate if habitat destruction continues unabated. We recognize that reforestation efforts are occurring in some areas, but these efforts will take years to have a positive effect on these species. Therefore, we find that these species' small, declining populations, in concert with their restricted ranges, habitat loss, and heightened vulnerability to adverse natural events and manmade activities are threats to the continued existence of these six species throughout their ranges.

Finding

Section 3 of the Act defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. We have carefully assessed the best scientific and commercial information available regarding threats to each of these six bird species. Significant effects have already occurred as a result of habitat loss, and some populations have likely been extirpated. The most significant threat to the six species in this rule is habitat loss and alteration. Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor each of these six species. We expect that any additional loss or degradation of habitats used by these species will have a greater, cumulative impact on these species. This is because with each contraction of an existing subpopulation, the likelihood of interchange with other subpopulations within patches decreases, while the likelihood of their reproductive isolation increases.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. Each of the species in this listing rule is highly restricted in its range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and determination apply to each species throughout its entire range.

We find that each of these six species is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Although there are ongoing attempts to alleviate some threats, no populations appear to be without current significant threats, and many threats are without obvious or readily available solutions. NGOs are conducting conservation efforts including educational programs and reforestation; however, these efforts are not adequately mitigating the threats to these species. We expect that these species will continue to experience an increased vulnerability to local extirpations into the future. On the basis of the best available scientific and commercial data, these six species meet the definition of endangered species under the Act, rather than threatened species, because these species are in danger of extinction at the present time. Therefore, endangered status is appropriate for all six species in accordance with the Act.

Status Determination for the Ash-breasted Tit-tyrant

The total population of the ash-breasted tit-tyrant is estimated to be approximately 780 individuals. We have carefully assessed the best available scientific and commercial information regarding the past, present, cumulative, and potential future threats faced by the ash-breasted tit-tyrant and have concluded that there are three primary factors that threaten the continued existence of the ash-breasted tit-tyrant: (1) Habitat destruction, fragmentation, and degradation; (2) limited size and increasing isolation of remaining populations; and (3) inadequate regulatory mechanisms.

The ash-breasted tit-tyrant population is small and declining, rendering the species particularly vulnerable to the threat of adverse natural events and human activities (e.g., deforestation and habitat alteration) that destroy individuals and their habitat. Ongoing human activities that curtail the species' habitat throughout its range exacerbate the demographic risks associated with small population sizes. The population has declined 10–19 percent in the past 10 years, and is predicted to continue declining commensurate with ongoing habitat loss. Habitat loss was a factor in the ash-breasted tit-tyrant's historical population decline, and the species is considered to be declining today in association with the continued reduction in habitat.

A species may be affected by more than one threat in combination. We have identified multiple threats that may have interrelated impacts on the species. However, it is not necessarily easy to determine (nor is it necessarily

determinable) which potential threat is the operational threat. These threats, either individually or in combination, are occurring at a sufficient geographical or temporal scale to significantly affect the status of the species.

Based on the immediate and ongoing threats to the ash-breasted tit-tyrant throughout its range, as described above, we determine that the ash-breasted tit-tyrant is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the ash-breasted tit-tyrant as endangered throughout all of its range.

Status Determination for the Junín Grebe

The Junín grebe, a flightless grebe, is endemic to Lake Junín, where it resides year-round. The species' population size is estimated as 100–300 individuals, although the number of mature individuals may be half this amount. We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Junín grebe and have concluded that there are four primary factors that threaten the continued existence of the Junín grebe: (1) Habitat destruction, fragmentation, and degradation; (2) disease; (3) limited size and isolation of remaining populations; and (4) inadequate regulatory mechanisms.

Junín grebe habitat continues to be altered by human activities, conversion, and destruction of habitat, which reduce the quantity, quality, distribution, and regeneration of habitat available for the Junín grebe on Lake Junín. Population declines have been correlated with water availability, and droughts have caused severe population fluctuations that have likely compromised the species' long-term viability. The Junín grebe population is small and believed to be declining, rendering the species vulnerable to the threat of adverse natural events and human activity (e.g., water extraction and contaminants from mining) that destroy individuals and their habitat. The population has declined 14 percent in the past 10 years, and this decline is predicted to continue commensurate with ongoing threats from habitat destruction and water contamination. Based on the immediate and ongoing threats to the Junín grebe throughout its range, as described above, we determine that the Junín grebe is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the Junín grebe as an endangered species throughout all of its range.

Status Determination for the Junín Rail

The Junín rail is a ground-nesting bird endemic to Lake Junín, where it resides year-round. The current estimated range of the species is 160 km^2 (62 mi^2), and its population size is estimated to be 1,000–2,499. However, both of these figures are likely to be overestimates. We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Junín rail and have concluded that there are four primary factors that threaten the continued existence of the rail: (1) Habitat destruction, fragmentation, and degradation; (2) disease and predation; (3) limited size and isolation of remaining populations; and (4) inadequate regulatory mechanisms.

Junín rail habitat continues to be altered by human activities, which results in the continued degradation and destruction of habitat and reduces the quality and distribution of remaining suitable habitat. The Junín rail population is small, increasing the species' vulnerability to the threat of adverse natural events (e.g., demographic or environmental) and human activities (e.g., water contamination, water level manipulation, cattail harvest, and overgrazing) that destroy individuals and their habitat. The Junín rail population has declined at a rate between 10 and 19 percent during the past 10 years, and this decline is predicted to continue commensurate with ongoing threats from habitat destruction, water contamination, overgrazing, and cattail harvest and burning.

Based on the immediate and ongoing threats to the Junín rail throughout its range, as described above, we determine that the Junín rail is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the Junín rail as an endangered species throughout all of its range.

Status Determination for the Peruvian Plantcutter

The Peruvian plantcutter is endemic to semiarid lowland dry forests of coastal northwestern Peru. The species' population size is estimated to be 500–1,000 individuals.

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the Peruvian plantcutter and have concluded that there are three primary factors that threaten the continued existence of the Peruvian plantcutter: (1) Habitat destruction, fragmentation, and degradation; (2) limited size and isolation of remaining populations; and (3) inadequate regulatory mechanisms.

Human activities that degrade, alter, and destroy habitat are ongoing throughout the Peruvian plantcutter's range. Widespread land conversion to agriculture has removed the vast majority of *P. pallida* dry forest habitat throughout the range of the Peruvian plantcutter.

The Peruvian plantcutter's population is small, rendering the species particularly vulnerable to the threat of adverse natural events and human activities (e.g., deforestation and firewood extraction) that destroy individuals and their habitat. Ongoing human activities that cause habitat loss throughout the species' range exacerbate the stochastic and demographic risks associated with small population sizes. The population has been estimated to have declined 1–9 percent in the past 10 years, in association with continued habitat loss. Habitat loss was a factor in this species' historical decline—the Peruvian plantcutter has been extirpated from 11 of its 14 historical sites—and the species is considered to be declining today in association with the continued reduction in habitat. Based on the immediate and ongoing significant threats to the Peruvian plantcutter throughout its range, as described above, we determine that the Peruvian plantcutter is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the Peruvian plantcutter as an endangered species throughout all of its range.

Status Determination for the Royal Cinclodes

The royal cinclodes, a large-billed ovenbird, is native to the high-altitude, semihumid *Polylepis* or *Polylepis-Gynoxys* woodlands of the Bolivian and Peruvian Andes, where it occupies a narrow range of distribution at elevations between 3,500 and 4,600 m (11,483 and 12,092 ft). The species has a highly restricted and severely fragmented range and is found only in the Peruvian administrative regions of Apurímac, Cusco, Junín, and Puno, and in the Bolivian Department of La Paz. The population of the royal cinclodes is estimated to be fewer than 300 individuals.

We have carefully assessed the best available scientific and commercial information regarding the past, present,

and potential future threats faced by the royal cinclodes and have concluded that there are three primary factors impacting the continued existence of the royal cinclodes: (1) Habitat destruction, fragmentation, and degradation; (2) limited size and isolation of remaining populations; and (3) inadequate regulatory mechanisms. Only 2–3 percent of the dense *Polylepis* woodlands preferred by the species likely remain (ABC 2010, p. 1). Limited by the availability of suitable habitat, the species occurs today only in some of these fragmented and disjunct locations. Royal cinclodes habitat is particularly vulnerable to the drying effects associated with diminished forest cover. Because the royal cinclodes population is small and declining, the species is particularly vulnerable to the threat of adverse natural events (e.g., demographic or environmental) and human activities (e.g., deforestation and habitat alteration) that destroy individuals and their habitat. The population has declined 30–49 percent in the past 10 years, and is predicted to continue declining commensurate with ongoing habitat loss.

Based on the immediate and ongoing threats to the royal cinclodes throughout its range, as described above, we determine that the royal cinclodes is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the royal cinclodes as an endangered species throughout all of its range.

Status Determination for the White-browed Tit-spinetail

The white-browed tit-spinetail is restricted to high-altitude woodlands of the Peruvian Andes. The species has a highly restricted and severely fragmented range, and is currently known from only a small number of sites in the Apurímac and Cusco regions in south-central Peru. The population of the white-browed tit-spinetail is estimated to be approximately 500 to 1,500 individuals. We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the white-browed tit-spinetail. There are three primary factors impacting the continued existence of the white-browed tit-spinetail: (1) Habitat destruction, fragmentation, and degradation; (2) limited size and isolation of remaining populations; and (3) inadequate regulatory mechanisms.

Widespread deforestation and the conversion of forests for grazing and agriculture have led to the fragmentation of habitat throughout the range of the white-browed tit-spinetail. Researchers estimate that only one percent of the dense *Polylepis* woodlands preferred by the species remain. Limited by the availability of suitable habitat, the species occurs today only in a few fragmented and disjunct locations. The species' severely restricted range, combined with its small population size, renders it particularly vulnerable to the threat of adverse natural and manmade (e.g., deforestation, habitat alteration, wildfire) events that destroy individuals and their habitat. The species has experienced a population decline of between 10 and 19 percent in the past 10 years, and is predicted to continue declining commensurate with ongoing habitat loss and degradation. Based on the immediate and ongoing threats to the white-browed tit-spinetail throughout its range, as described above, we determine that the white-browed tit-spinetail is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the white-browed tit-spinetail as an endangered species throughout all of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to these species. These prohibitions, under 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (take includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) any endangered wildlife species within the United States or upon the high seas; or to import or export; to deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or to sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This final rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this

determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Endangered Species Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for "Cinclodes, royal", "Grebe, Junín", "Plantcutter, Peruvian", "Rail, Junín", "Tit-spinetail, white-browed", and "Tit-tyrant, ash-breasted" in alphabetical order under Birds to the List of Endangered and Threatened Wildlife, as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Birds.							
*	*	*	*	*	*	*	
Cinclodes, royal	*Cinclodes aricomae*	Bolivia, Peru	Entire	E	799	NA	NA
*	*	*	*	*	*	*	
Grebe, Junín	*Podiceps taczanowskii.*	Peru	Entire	E	799	NA	NA
*	*	*	*	*	*	*	
Plantcutter, Peruvian	*Phytotoma raimondii*	Peru	Entire	E	799	NA	NA
*	*	*	*	*	*	*	
Rail, Junín	*Laterallus tuerosi*	Peru	Entire	E	799	NA	NA
*	*	*	*	*	*	*	
Tit-spinetail, white-browed.	*Leptasthenura xenothorax.*	Peru	Entire	E	799	NA	NA
Tit-tyrant, ash-breasted.	*Anairetes alpinus*	Bolivia, Peru	Entire	E	799	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: June 28, 2012

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–17402 Filed 7–23–12; 8:45 am]

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FEDERAL REGISTER

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No. 142 July 24, 2012

Part III

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 215 *et al.*

Defense Federal Acquisition Regulations; Final Rules and Proposed Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective Date:* July 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6089; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. Adds paragraph (d)(1)(vii) to clause 252.204–7007, Alternate A, Annual Representations and Certifications, which was inadvertently removed from the Code of Federal Regulations with the publication of DFARS Case 2011–D048 (77 FR 19128), and makes a conforming change to the clause date.

2. Conforms statutory titles to the new Positive Law Codification of Title 41, United Sates Code, "Public Contracts," in Alternates IV and V of clause 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program and makes conforming changes to the dates of the Alternates, which were inadvertently omitted from publication of the final rule under DFARS Case 2012–D003 (77 FR 35879).

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Section 252.204–7007 is amended—

■ a. By removing the clause date "(JUN 2012)" and adding "(JUL 2012)" in its place; and

■ b. By adding paragraph (d)(1)(vii) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d) * * *

(1) * * *

(vii) 252.247–7022, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

* * * * *

252.225–7036 [Amended]

■ 3. Section 252.225–7036 is amended in Alternates IV and V by removing the clause date "(MAY 2012)" and adding "(JUN 2012)" in its place and in paragraph (c), by removing "Act".

[FR Doc. 2012–17586 Filed 7–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 225, and 252

RIN 0750–AH42

Defense Federal Acquisition Regulation Supplement: Contracting With the Canadian Commercial Corporation (DFARS Case 2011–D049)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the requirements for the Canadian Commercial Corporation to submit data other than certified cost or pricing data.

DATES: *Effective date:* July 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 61296 on October 4, 2011. DoD also issued a correction to a sentence in the Background Summary of the **Federal Register** notice on October 18, 2011, at 76 FR 64297. One respondent submitted public comments in response to the proposed rule.

With some exceptions, as provided at DFARS 225.870–1(c), the Canadian Commercial Corporation awards and administers DoD contracts with contractors located in Canada. DoD has waived the requirement for the Canadian Commercial Corporation and its subcontractors to submit certified cost or pricing data (see DFARS 215.403–1(c)(4)(C)). However, the purpose of this rule is to clarify that the requirement to submit data other than certified cost or pricing data has not been waived.

II. Discussion and Analysis

A. Summary of Significant Changes in the Final Rule as a Result of Public Comments

1. DFARS 215.408(5) has been revised to raise the threshold for cost-reimbursement contracts from the simplified acquisition threshold to $700,000.

2. DFARS 215.408(5) has also raised the level to which the head of the contracting activity can delegate approval authority for using the provision at 252.215–7003 and the clause at 252.215–7004 in accordance with 215.408(5)(i)(B) and (ii)(B), respectively, from one level above the contracting officer to two levels above the contracting officer.

3. DFARS 225.870–4(c)(5) and 252.215–7003 now include the text at FAR 15.403–3(a)(4) to notify the contracting officer and the offerors that in order to be eligible for award, offerors must provide data necessary to determine that the price is fair and reasonable.

4. The clause at 252.215–7004 has been revised to require data other than certified cost or pricing data for modifications only when they exceed the simplified acquisition threshold. The contracting officer may modify the clause to specify a higher threshold.

B. Analysis of Public Comments

1. Use of Domestic Policies, Procedures, and Practices

Comment: The respondent cited the Defence Production Sharing Agreement of 1956 and the need to apply Canadian domestic policies, practices, and procedures when conducting price analysis on a Canadian supplier.

Response: Data other than certified cost or pricing data can be released in line with Canadian laws and

government contracting practices, policies, and procedures.

2. Information Necessary To Make a Determination of Fair and Reasonable Prices

Comment: According to the respondent, under current defense procurement arrangements, Canada assumes the cost of investigating and verifying whether the prices on a procurement contract and its subsequent management are fair and reasonable. The respondent expressed concern over significant costs associated with investigation and verification of price reasonableness for companies and Government, so that duplication should be avoided. Nevertheless, the respondent acknowledged that DoD is ultimately responsible for making a final decision regarding the reasonableness of the prices it pays and that there may be some cases (such as sole source fixed-price contracts over $500 million and sole source cost-reimbursement contracts that exceed the simplified acquisition threshold) in which additional information may be needed. The respondent suggested modification to the DFARS rule to emphasize that the DoD contracting officer should not request more information than is necessary to determine that the price is fair and reasonable.

Response: The principle that the contracting officer should not request more data than is necessary to determine that the price is fair and reasonable is stated in FAR 15.402(a)(3) and applies to all DoD requests for cost or pricing data. This DFARS rule reiterates at 225.870–4(c)(2), and in paragraph (b)(iii) of both the new provision at 252.215–7003 and the new clause at 252.215–7004, that the contracting officer shall only require submission of data other than certified cost or pricing data to the extent necessary to determine a fair and reasonable price.

To avoid unnecessary duplication of effort, the provision and clause both provide that the Canadian Commercial Corporation shall provide to the contracting officer the analysis provided to the Canadian Commercial Corporation by Public Works and Government Services Canada (comparable to the analysis required at FAR 15.404–1) as well as profit rate or fee.

3. Requests for Information Other Than Certified Cost or Pricing Data

Comment: The respondent recommended that approval should be required for any request of information other than certified cost or pricing data.

Response: The DFARS rule does not require authorization when requesting data for sole source acquisitions that are—

- Cost-reimbursement, if the contract value is expected to exceed a dollar threshold of $700,000; or
- Fixed-price, if the contract value is expected to exceed $500 million.

The respondent acknowledged that for such contracts additional requests for data other than certified cost or pricing data may be warranted. To require higher level approval of each such request would impose an unnecessary administrative burden. Higher level approval is required for any request for data other than certified cost or pricing data in solicitations and contracts other than those sole source acquisitions specified in the rule.

4. Level of Authorization for Requests for Additional Information

Comment: The respondent recommended requiring the approval by the head of the contracting activity, or a delegate no lower than the Senior Executive Service level, before a contracting officer proceeds with any request for data other than certified cost or pricing data to the Canadian Commercial Corporation.

Response: In response to this comment, DoD revised the final rule to restrict delegation of approval authority by the head of the contracting activity to a level no lower than two levels above the DoD contracting officer.

5. Application to Competitive Acquisitions in Which Two or More Offers Are Received

Comment: The respondent stated that substantive investigation and cost verification of cost reasonableness is normally not required if a solicitation for goods or services is considered competitive. Therefore, the respondent recommended that requests for data other then certified cost or pricing data not be allowed on competitive acquisitions in which more than one offer is received. The respondent acknowledged that if only one offer is received, the acquisition may be treated the same as a sole source procurement, rather than a competitive procurement.

Response: FAR 15.403–3 states that when adequate price competition exists, generally no additional data are necessary to determine the reasonableness of price. FAR 15.404–1 provides that comparison of proposed prices received in response to the solicitation normally establishes a fair and reasonable price. However, the FAR does not preclude the unusual circumstance in which additional data might be required (although preferably from a source other than the offeror). In such circumstances, the contracting officer may request the data with the higher level approval as specified in the final rule.

6. Modifications

Comment: The respondent recommended a minimum threshold to limit the requests for data other than certified cost or pricing data to significant contract modifications.

Response: DoD has modified the final rule to provide a threshold at least equal to the simplified acquisition threshold. The prescription advises that the request for data other than certified cost or pricing data should be used (1) for modifications that equal or exceed the simplified acquisition threshold; or (2) when questions of cost or price realism arise. The contracting officer can modify the clause to specify a higher threshold, based on the value and type of acquisition.

7. Compliance With Canadian law

Comment: According to the respondent, any release of data by the Canadian Commercial Corporation must comply with Canadian law, regulations, and obligations, especially the Access to Information Act and the Privacy Act, as well as non-disclosure agreements with parties in a contractual relationship with the Government.

Response: Award of a contract to a Canadian contractor via the Canadian Commercial Corporation is subject to the terms and conditions of the DFARS clause and to FAR 15.403–3(a)(4), which specifies that an offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not

subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies 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 it only impacts Canadian business concerns. No domestic small business entities will be impacted by this rule. For the definition of "small business", the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is 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 use of American products, materials or labor."

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data.

List of Subjects in 48 CFR Parts 215, 225, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Amend section 215.403–1 by revising the heading and paragraph (c)(4)(C) to read as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(4) * * *

(C) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (but see 215.408(5) and 225.870–4(c)).

* * * * *

■ 3. Amend section 215.408 by adding paragraph (5) to read as follows:

215.408 Solicitation provisions and contract clauses.

* * * * *

(5) When contracting with the Canadian Commercial Corporation—

(i) Use the provision at 252.215–7003, Requirement for Data Other Than Certified Cost or Pricing Data—

(A) In solicitations for sole source acquisitions that are—

(*1*) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(*2*) Fixed-price, if the contract value is expected to exceed $500 million; or

(B) In other solicitations, if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that data other than certified cost or pricing data is needed in order to determine that the price is fair and reasonable (see FAR 15.403–3(a)); and

(ii)(A) Use the clause at 252.215–7004, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation—

(*1*) In solicitations and contracts for sole source acquisitions that are—

(*i*) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(*ii*) Fixed-price, if the contract value is expected to exceed $500 million; or

(*2*) In other solicitations and contracts, if the head of the contracting activity, or designee no lower than two levels above the contracting officer, determines that it is reasonably certain that data other than certified cost or pricing data will be needed in order to determine that the price of modifications is fair and reasonable (see FAR 15.403–3(a)).

(B) The contracting officer may specify a higher threshold in paragraph (b) of the clause.

PART 225—FOREIGN ACQUISITION

225.802–70 [Amended]

■ 4. Amend section 225.802–70 in the second sentence by removing "Subpart" and adding "subpart" in its place.

225.870–1 [Amended]

■ 5. Amend section 225.870–1, paragraph (a), by removing "Canadian Government" each time it appears and adding "Canadian government" in its place.

■ 6. Amend section 225.870–4 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

225.870–4 Contracting procedures.

* * * * *

(c) *Requirement for data other than certified cost or pricing data.* (1) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (see 215.403–1(c)(4)(C)).

(2) The Canadian Commercial Corporation is not exempt from the requirement to submit data other than certified cost or pricing data, as defined in FAR 2.101. In accordance with FAR 15.403–3(a)(1)(ii), the contracting officer shall require submission of data other than certified cost or pricing data from the offeror, to the extent necessary to determine a fair and reasonable price.

(3) The contracting officer shall use the provision at 252.215–7003, Requirement for Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, and the clause at 252.215–7004, Requirement for Data Other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at 215.408(5)(i) and (ii), respectively.

(4) Except for contracts described in 225.870–1(c)(1) through (4), Canadian suppliers will provide required data other than certified cost or pricing data exclusively through the Canadian Commercial Corporation.

(5) As specified in FAR 15.403–3(a)(4), an offeror who does not comply with a requirement to submit data that the contracting officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award, unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add sections 252.215–7003 and 252.215–7004 to read as follows:

252.215–7003 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation.

As prescribed at 215.408(5)(i), use the following provision:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—CANADIAN COMMERCIAL CORPORATION (JUL 2012)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

(i) Profit rate or fee (as applicable).

(ii) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(iii) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to insert description of the data required in accordance with FAR 15.403–3(a)(1)*].

(c) As specified in FAR 15.403–3(a)(4), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(End of provision)

252.215–7004 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications–Canadian Commercial Corporation.

As prescribed at 215.408(5)(ii), use the following clause:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS—CANADIAN COMMERCIAL CORPORATION (JUL 2012)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following for modifications that exceed the simplified acquisition threshold [*or higher dollar value specified by the U.S. Contracting Officer in the solicitation*].

(i) Profit rate or fee (as applicable).

(ii) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(iii) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to insert description of the data required in accordance with FAR 15.403–3(a)(1)*].

(End of clause)

[FR Doc. 2012–17588 Filed 7–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AH78

Defense Federal Acquisition Regulation Supplement; Specialty Metals—Definition of "Produce" (DFARS Case 2012–D041)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of "produce" as it applies to specialty metals. The National Defense Authorization Act for Fiscal Year 2011 directed DoD to review the definition of "produce" to ensure its compliance with the statutory restrictions on specialty metals and to determine if a revision to the current rule was necessary and appropriate.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before September 24, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012–D041, using any of the following methods:

Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012–D041" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012–D041." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012–D041" on your attached document.

Email: dfars@osd.mil. Include DFARS Case 2012–D041 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106; facsimile 571–372–6101. Please cite DFARS Case 2012–D041.

SUPPLEMENTARY INFORMATION:

I. Background

As required by section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383), DoD sought comments in the **Federal Register** (76 FR 18383) on July 25, 2011, regarding the definition of "produce" as it applies to the production of specialty metals. The final rule under DFARS Case 2008–D003 (74 FR 37626 on July 29, 2009) defined "produce" to mean "the application of forces or processes to a specialty metal to create the desired physical properties through quenching or tempering of steel plate, gas atomization or sputtering of titanium, or final consolidation of non-melt derived titanium powder or titanium alloy powder."

Seventeen sources submitted comments in response to the request for comments in the 2011 **Federal Register** notice, focusing almost exclusively on whether such processes as quenching and tempering should continue to be considered as production of thin specialty metal steel armor plate. Some of the information provided was proprietary. DoD has reviewed and analyzed the comments received in response to the **Federal Register** notice. In addition, DoD considered current technologies for production of specialty metals other than titanium and analyzed the impact any change in the definition would have on DoD's ability to meet its mission requirements. As a result, DoD is proposing to amend the definition of "produce" to eliminate the phrase "quenching and tempering" of armor steel plate, and to expand the application of the other listed technologies, currently restricted just to titanium and titanium alloys, to any specialty metal that could be formed by such technologies.

II. Discussion and Analysis of Comments

A. General

Two of seventeen respondents supported the current definition, and the other fifteen respondents opposed the current definition of "produce," because it includes processes in addition to melting regarding the production of steel armor plate, but they acknowledged that other processes are appropriate to the definition of "produce" for other specialty metals.

B. Quenching or tempering of steel plate

1. Berry Amendment

Comment: The majority of respondents contended that the current definition of "produce" is contrary to the Berry Amendment. Prior to enactment of 10 U.S.C. 2533b, the restriction on specialty metals was part of the domestic source restriction legislation commonly known as the Berry Amendment, included in annual defense appropriations act restrictions since 1973, and was eventually codified (with certain modifications) by section 832 of the NDAA for FY 2002 at 10 U.S.C. 2533a. In the NDAA for FY 2007, Congress deleted the specialty metals restrictions from 10 U.S.C. 2533a and created a new section at 10 U.S.C. 2533b to set forth the restrictions on specialty metals.

The respondents contended that, since the Berry Amendment required products to be wholly manufactured in the United States, the specialty metals restrictions should be equally restrictive. They stated that "melted or produced" means "melted" in the case of steel armor plate. These respondents averred that, although the legislation uses "melted or produced," it was not intended to weaken the requirement. However, some respondents did cite the report accompanying the Senate version of the bill, which indicated the intent to allow some flexibility in obtaining critical materials.

DoD Response: The law has never included a definition of "produce" regarding the requirement to acquire domestic specialty metals. When Congress created the new provisions on specialty metals in 10 U.S.C. 2533b, it expressly eliminated the prior restrictions on specialty metals in 10 U.S.C. 2533a and created new provisions regarding specialty metals at 10 U.S.C. 2533b, one of which was the phrase "melted or produced." DoD interprets this new phrase "melted or produced" as clearly permitting processes in addition to melting for the creation of specialty metals. One of the reasons for removing specialty metals from the rest of the Berry Amendment restrictions and enacting 10 U.S.C. 2533b was the need to differentiate the statutory restrictions for specialty metals from the statutory restrictions on other items covered by the Berry Amendment. The statement in the Senate report that 10 U.S.C. 2533b was

intended to provide flexibility in obtaining critical materials provides support for DoD's definition of "produce" which gave DoD critical access to thin-gauge armor steel plate that was quenched or tempered in the United States, regardless of where the steel was melted.

2. Former Secretary of Defense Melvin Laird Memorandum

Comment: Some respondents stated that the Laird Memorandum (November 20, 1972) used the term "melted" when the Secretary of Defense addressed DoD's implementation of the restriction in section 724 of the DoD Appropriations Act for Fiscal Year 1973 (Pub. L. 92–570) that added specialty metals to the Berry Amendment list of items that must, with some exceptions, be "grown, reprocessed, reused, or produced in the United States."

DoD Response: The comment is factually correct. The Laird memorandum represented the DoD implementation of the law as it existed at that time, which was upheld in the courts. However, the statute now uses the terms "melted or produced," and it would be redundant to add the term "produced" unless it had a meaning different than "melted."

3. Acme of Precision Surgical v. Weinberger

Comment: According to some respondents, the U.S. District Court of the Eastern District of Pennsylvania, 580 F. Supp. 490, 504–07, concluded that there was a reasonable basis in law for DoD's requirement that "all specialty metal products used in hardware by the military be formed from specialty metals melted in the United States."

DoD Response: In Acme of Precision Surgical v. Weinberger, the plaintiff alleged that DoD violated the Buy American Act because the "Buy American" provisions required that all articles of "specialty metals" must be manufactured entirely in the United States, and not just "melted" in the United States. The court found on behalf of DoD, finding reasonable DoD's interpretation of the provisions as requiring only the melting in the United States of specialty metals rather than the performance in the United States of all processes associated with the manufacture of specialty metals. However, this decision was based on the law and implementing regulations as they existed at the time of the decision, not on the current statute and regulations.

4. Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate

Comment: Some respondents cited the additional restriction on armor steel plate in DFARS 252.225–7030, which requires armor plate to be "melted and rolled in the United States or Canada" to support their request to remove the terms "quenching and tempering" from the definition of "produce." They cited the annual Defense appropriations acts that since 1972 have contained language that armor plate for DoD procurements must be "melted and rolled in the United States or Canada."

DoD Response: The Defense appropriations act restriction on the acquisition of steel plate as an end product for use in a Government-owned facility or a facility under the control of DoD is not pertinent to the interpretation of "melted or produced" for purposes of acquisition of specialty metals in accordance with 10 U.S.C. 2533b because 10 U.S.C. 2533b applies to manufactured products for all specialty metals in contrast to the DFARS clause restricting steel plate that is "melted and rolled."

5. The Federal Transit Administration (FTA) Buy America Restrictions, the American Recovery and Reinvestment Act of 2009 (ARRA), and the Customs and Border Protection Act

Comment: Several respondents cited other acts that restrict use of foreign iron, steel, and manufactured products in Federally funded projects to those "produced in the United States."

DoD Response: These acts are not germane to this definition, which is implementing 10 U.S.C. 2533b. The language and applicability of these statutes is very different from 10 U.S.C. 2533b. The FTA and Customs and Border Protection Act do not apply to DoD procurements. The ARRA only applies to construction material in acquisitions utilizing ARRA funds. Furthermore, the FTA and ARRA do not apply to specialty metals or armor steel plate but to iron and steel used in construction.

6. The Intent of Congress and Chevron USA, Inc. v. the National Resources Defense Council

Comment: The majority of respondents claimed that including quenching and tempering in the definition of "produce" for steel armor plate is against the intent of Congress. One respondent cited Chevron USA, Inc. v. the National Resources Defense Council (Chevron USA, Inc.) that concluded that agency regulations such as the DFARS should be subject to a two-part test that first considers the intent of Congress.

DoD Response: Chevron USA, Inc. applies only if the intent of Congress is not clear. DoD looks primarily to the language of the statutes enacted by Congress to determine the requirements of the law. Here, the statute does not define the term "produce." As the court in Chevron USA, Inc. stated, "if the statute is silent or ambiguous with respect to the specific issue," the question for the court is "whether the agency's answer is based on a permissible construction of the statute." Committee reports and letters from individual or groups of representatives or senators are not law and, in any event, do not necessarily reflect the intent of the majority of Congress. Moreover, although the House of Representatives' version of the specialty metals provision could have been interpreted as specifically excluding quenching and tempering from the definition of "produce," this version of the bill was not enacted. Finally, although section 823 requested a review of the definition by DoD, it did not direct a particular outcome of that review.

7. Sufficient Domestic Capacity

Comment: Many respondents stated that there is sufficient domestic capacity of armor steel plate melted, rolled, quenched, and tempered in the United States to meet DoD's demand and that the number of specialty metal steel manufacturers has increased since 2006.

DoD Response: One of the reasons for including quenching and tempering of armor steel plate in the definition of "produce" was an assessment that there was an insufficient amount of thin-gauge MIL–A grade steel armor to meet peak demand to satisfy critical need for Mine Resistant Ambush Protection (MRAP) vehicles for contingency operations. Since that time, the U.S. industrial base has grown (even with the current definition of "produce"). In fact, both the number of specialty metal steel plate manufacturers and their overall production capacities have increased steadily since the current definition of "produce" was introduced. Further, some of the manufacturers that were previously sourcing specialty metals melted in Mexico for quenching and tempering in the United States, are now obtaining steel melted in Canada (which is a qualifying country and part of the national technology and industrial base). DoD's assessment is that there is now sufficient capacity to meet DoD requirements, if DoD were to remove "quenching and tempering" from the definition of "produce."

8. Provide Protection and an Incentive to U.S. Manufacturers and Create Jobs

Comment: Many respondents addressed the need to protect and incentivize U.S. industry and to create U.S. jobs. Some respondents stated that the current definition encourages the use of foreign metals, while discouraging investment in domestic industry. These respondents also stated that excluding quenching and tempering processes would provide a more financially secure market and provide an incentive for U.S. manufacturers to innovate. Many respondents indicated that changing the definition would increase specialty metal steel production and increase the number of jobs in the United States.

DoD Response: Melting is only one stage in a multi-step process that is used to produce a product with properties that meet the requirements of an application, i.e., specifications. Quenching and tempering are not considered as "low-value finishing processes" (see preamble to final rule under DFARS Case 2008–D003, 74 FR 37630, July 29, 2009). The proposed change to the definition of "produced" may provide a more financially secure market to large specialty metals steel manufacturers, but the large, complex, and highly segmented specialty metal industry has many other stakeholders. The specialty steel industry appears to be thriving. Therefore, although not required by the law, for the reasons stated in section II.B.7. of this preamble, DoD is proposing to eliminate quenching and tempering of steel armor plate from the definition of "produce."

9. Other Ways to Meet Shortages

Comment: While acknowledging DoD's critical need for armor steel plate for MRAP vehicles, a number of respondents suggested that DoD could have used other exceptions in the law, such as the domestic nonavailability exception or national security waiver to procure armor steel plate or use of the Defense Priorities and Allocation System (DPAS) to meet demands through domestic production.

DoD Response: The Defense Priorities and Allocation System is designed to provide priority production and shipment for ongoing production lines, but it does not increase overall production capacity when urgently needed. At the time of issuance of the final DFARS rule under DFARS Case 2008–D003, DoD considered the options of processing a domestic nonavailability determination or a national security exception, but found both options to be unsuitable (see 74 FR 37631).

10. Impact on Price

Comment: Several respondents stated that changing the definition to eliminate quenching and tempering would raise prices, because it would reduce competition. Another respondent claimed that changing the definition would not raise the price of specialty metal steel armor plate.

DoD Response: DoD considers that there are now sufficient sources of steel armor plate melted in the United States or Canada that a change to the definition would not seriously impact the level of competition, or the price of specialty metal steel armor plate.

C. Processes for Titanium Products

Comment: None of the respondents objected to production processes for titanium products such as gas atomization, sputtering, and powder consolidation production processes for titanium products in the definition of "produce."

DoD Response: The proposed rule expands the application of these newer technologies to any types of specialty metals that might utilize such processes in their production.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed rule affects primarily producers of specialty metal steel armor plate, and manufacturers that supply steel armor plate that will be incorporated into end items to be acquired by DoD. Producers of specialty metals are generally large businesses. There is a high capitalization requirement to establish a business that can melt or produce specialty metals. The small business size standard for primary metal manufacturing ranges from 500 to 1,000 employees. All the specialty metals producers reviewed had more than 500 employees. There are numerous manufacturers of products containing specialty metals, either as prime contractors or subcontractors. DoD does not have the data to determine the total number of these manufacturers, or the number that are small businesses, because the Federal Procurement Data System only collects data on prime contractors and end items, not subcontractors and components of end items.

There are no projected reporting, recordkeeping, or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives to the rule which would minimize any impact of the rule on small entities and still meet the requirements of the statute 10 U.S.C. 2533b.

DoD invites comments from small businesses and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2012–D041), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is proposed to be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.212–7001 [Amended]

2. Section 252.212–7001 is amended—

a. By removing the clause date "(JUN 2012)" and adding "(DATE)" in its place;

b. In paragraph (b)(7), by removing the clause date "(JUL 2009)" and adding "(DATE)" in its place; and

c. In paragraph (b)(8), by removing the clause date "(JUN 2012)" and adding "(DATE)" in its place.

3. Section 252.225–7008 is amended—

a. By removing the clause date "(JUL 2009)" and adding "(DATE)" in its place; and

b. In paragraph (a), by removing the numerical designations (1) through (4) from the definitions and revising the definition of "produce" to read as follows:

252.225–7008 Restriction on Acquisition of Specialty Metals.

* * * * *

(a) * * *

Produce means the gas atomization, sputtering, or final consolidation of non-melt derived metal powders.

* * * * *

4. Section 252.225–7009 is amended—

a. By removing the clause date "(JUN 2012)" and adding "(DATE)" in its place; and

b. In paragraph (a), by removing the numerical designations (1) through (14) from the definitions and revising the definition of "produce" to read as follows:

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

(a) * * *

Produce means the gas atomization, sputtering, or final consolidation of non-melt derived metal powders.

* * * * *

252.244–7000 [Amended]

5. Section 252.244–7000 is amended by removing the clause date "(JUN 2012)" and adding "(DATE)" in its place and in paragraph (b), removing the clause date "(JUN 2012)" and adding "(DATE)" in its place.

[FR Doc. 2012–17590 Filed 7–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, and 252

RIN 0750–AH58

Defense Federal Acquisition Regulation Supplement: Ownership of Offeror (DFARS Case 2011–D044)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide a provision for offerors, if owned or controlled by another business entity, to identify the Commercial and Government Entity (CAGE) code and legal name of that business entity.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 24, 2012, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D044, using any of the following methods:

Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2011–D044" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011–D044." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011–D044" on your attached document.

Email: dfars@osd.mil. Include DFARS Case 2011–D044 in the subject line of the message.

Fax: 571–372–6094.

Mail: Defense Acquisition Regulations System, Attn: Ms. Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Fallon, telephone 571–372–6087.

SUPPLEMENTARY INFORMATION:

I. Background

DoD proposes to collect the CAGE code and name from offerors, if owned or controlled by another business entity, in a new provision with an offeror's representations and certifications. The CAGE code is a five-character identification number used extensively within the Federal Government, and is administered by the Defense Logistics Information Service. A search feature for CAGE codes is available at *http://www.logisticsinformationservice.dla.mil/cage_welcome.asp.* CAGE codes for vendors located in the United States may be obtained via registration in the Central Contractor Registration (CCR) application, available at *http://www.acquisition.gov.* Additional information about CAGE code assignments is available at *https://www.fsd.gov/app/answers/detail/a_id/186.*

The ability to consistently, uniquely, and easily identify owners of offerors for DoD contractors is becoming increasingly required to support the implementation of business tools that provide insight into spending patterns for entire corporations. This new provision will—

- Enable the tracking of performance issues that affect the entire corporation;
- Provide insight for the deployed commander on contractor personnel in-theater;
- Support the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics' preferred supplier program; and
- Facilitate Defense Procurement and Acquisition and Policy priorities for a common price negotiation and audit history tool.

This case requires that a provision be included in the annual representations and certifications completed in the Online Representations and Certifications Application (ORCA). The Defense Logistics Agency (DLA) will be able to access the ORCA data and use it to supplement the CAGE file maintained by its DLA Logistics Information Service.

DoD published a notice of public meeting in the **Federal Register** at 76 FR 64902 on October 19, 2011, with public comments due December 9, 2011. No public comments were received.

This rule requires offerors to represent that, if it is owned by another business entity, it has entered the CAGE code and name of that owner. As such, this rule proposes the following DFARS changes:

- Revise 204.1202, Solicitation provision and contract clause, to add the provision at 252.204–70XX, Ownership of Offeror;

- Revise 204.7207, Solicitation provision, to prescribe the use of the provision at 252.204–70XX, Ownership of Offeror;
- Revise 212.301(f)(iv), Solicitation provisions and contract clauses for the acquisition of commercial items, to add the provision at 252.204–70XX, Ownership of Offeror;
- Revise 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, preface to reflect changes required at 204.1202;
- Revise 252.204–7007, Alternate A, Annual Representations and Certifications, to add the provision at 252.204–70XX, Ownership of Offeror; and
- Add a new provision at 252.204–70XX, Ownership of Offeror.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD expects that this proposed rule may have an economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

This rule would affect offerors that are owned by another business entity. As such, this DFARS rule would require an offeror to represent that, if it is owned or controlled by another business entity, it has entered the CAGE code and the name of that entity. DoD made 308,286 new contract awards to contractors with approximately 55,000 unique Data Universal Numbering System (DUNS) numbers in Fiscal Year 2011. Approximately 41,000 of these awards were to small-business unique DUNS. It is estimated that approximately 5% of these small business unique DUNS are corporations under another business entity. Therefore, DoD estimates that this rule will apply to approximately 2,050 small-business unique DUNS contractors.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to accomplish the stated objectives of this rule. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD 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 (DFARS Case 2011–D044) in the correspondence.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning Ownership of Offeror (DFARS Case 2011–D044) to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average 0.5 hours 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.

The annual reporting burden estimated as follows:

Respondents: 308,286.

Responses per respondent: 1.5.

Total annual responses: 462,429.

Preparation hours per response: 0.5 hours.

Total response burden hours: 231,215 hours.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov*, and a copy to the Defense Acquisition Regulations System, Attn: Ms. Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *dfars@osd.mil*. Include DFARS Case 2011–D044 in the subject line of the message.

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.1202 is amended by—

a. Redesignating paragraphs (2)(i) through (xiii) as paragraphs (2)(ii) through (xiv); and

b. Adding new paragraph (2)(i) to read as follows:

204.1202 Solicitation provision and contract clause.

* * * * *

(2) * * *

(i) 252.204–70XX, Ownership of Offeror.

* * * * *

3. Section 204.7207 is revised to read as follows:

204.7207 Solicitation provisions.

(a) Use the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when—

(1) The solicitation does not include the clause at FAR 52.204–7, Central Contractor Registration; and

(2) The CAGE codes for the potential offerors are not available to the contracting office.

(b) Use the provision at 252.204–70XX, Ownership of Offeror, in all solicitations.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

4. Section 212.301 is amended by—

a. Redesignating paragraphs (f)(iv)(C) through (Q) as paragraphs (f)(iv)(D) through (R); and

b. Adding a new paragraph (f)(iv)(C) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(iv) * * *

(C) Use the provision at 252.204–70XX Ownership of Offeror, as prescribed in 204.7207.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7001 [Amended]

5. Section 252.204–7001 is amended by removing from the introductory text the reference "204.7207" and adding in its place "204.7207(a)".

6. Section 252.204–7007 is amended by—

a. Removing from the provision heading "(JUN 2012)" and adding in its place "(DATE)";

b. Redesignating paragraphs (d)(1)(i) through (vii) as paragraphs (d)(1)(ii) through (viii); and

Adding a new paragraph (d)(1)(i) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d)(1) * * *

(i) 252.204–70XX, Ownership of Offeror. Applies to all solicitations.

* * * * *

7. Section 252.204–70XX is added to read as follows:

252.204–70XX Ownership of Offeror.

As prescribed in 204.7207(b), use the following provision:

OWNERSHIP OF OFFEROR (DATE)

(a) *Definitions.* As used in this provision—

Highest-level owner means the business entity, which owns or controls the one or more business entities that own or control the offeror.

Immediate owner means the business entity, which has the most direct and proximate ownership or control of the offeror.

Owner, as used in this provision, means the business entity, other than the offeror, that owns or controls the offeror, or that owns or controls other business entities that own or control the offeror. The two types of owners, for purposes of this provision, are immediate owners and highest-level owners (these owners may be the same for some entities).

(b) The offeror represents by submission of its offer that it [_] is or [_] is not owned or controlled by a business entity as defined in paragraph (a) of this provision.

(c) If the offeror has indicated "is" in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code:

_____

Immediate owner legal name:

_____

(*Do not use a "doing business as" name.*)

Immediate owner is the same as highest-level owner: [_] Yes or [_] No.

(d) If the offeror has indicated "no" in paragraph (c) of this provision, indicating that the immediate owner is not the highest-level owner, then enter the following information:

Highest-level owner CAGE code:

_____

Highest-level owner legal name:

_____

(*Do not use a "doing business as" name.*)

(e) CAGE codes for entities located in the United States may be obtained by registration in the Central Contractor Registration (CCR) application available at *http://www.acquisition.gov;* or by submitting a DD Form 2051 to the address provided on the form. Instructions regarding the assignment of CAGE codes for entities located outside the United States are available at *http://www.dlis.dla.mil/forms/form_AC135.asp.*

(End of provision)

[FR Doc. 2012–17593 Filed 7–23–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Tuesday,
No. 142 July 24, 2012

Part IV

The President

Executive Order 13620—Taking Additional Steps to Address the National Emergency With Respect to Somalia

Federal Register
Vol. 77, No. 142
Tuesday, July 24, 2012

Presidential Documents

Title 3—

The President

Executive Order 13620 of July 20, 2012

Taking Additional Steps to Address the National Emergency With Respect to Somalia

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps to deal with the national emergency with respect to the situation in Somalia declared in Executive Order 13536 of April 12, 2010, in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia, hereby order:

Section 1. Section 1(a) of Executive Order 13536 is hereby amended to read as follows:

"(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including but not limited to:

(1) acts that threaten the Djibouti Agreement of August 18, 2008, or the political process;

(2) acts that threaten the Transitional Federal Institutions or future Somali governing institutions, the African Union Mission in Somalia (AMISOM), or other future international peacekeeping operations related to Somalia; or

(3) acts to misappropriate Somali public assets;

(B) to have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

(C) to have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related materiel, or any technical advice, training or assistance, including financing and financial assistance, related to military activities;

(D) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of acts of violence targeting civilians in Somalia, including killing and

maiming, sexual and gender-based violence, attacks on schools and hospitals, taking hostages, and forced displacement;

(E) to be a political or military leader recruiting or using children in armed conflict in Somalia;

(F) to have engaged, directly or indirectly, in the import or export of charcoal from Somalia on or after February 22, 2012;

(G) to have materially assisted, sponsored, or provided financial, material, logistical or technical support for, or goods or services in support of, the activities described in subsections (a)(ii)(A) through (F) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(H) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order."

Sec. 2. (a) The importation into the United States, directly or indirectly, of charcoal from Somalia is prohibited.

(b) The prohibition in subsection (a) of this section applies except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 3. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order: (a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

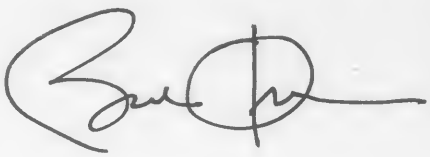
(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term "charcoal" means any product classifiable in heading 3802 or 4402 of the Harmonized Tariff Schedule of the United States.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 7. This order is effective at 2:00 p.m. eastern daylight time on July 20, 2012.



THE WHITE HOUSE,
July 20, 2012.

[FR Doc. 2012–18237
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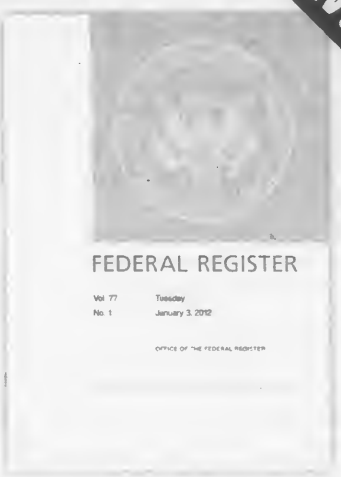

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